# United States Court of Appeals for the Second Circuit



## **TRANSCRIPT**

## United States Court of Appeals

FOR THE SECOND CIRCUIT

SUN ENTERPRISES, LTD., SOUTHERN NEW YORK FISH AND GAME ASSOCIATION, INC., LYMAN E. KIPP, RICHARD E. HOMAN, NO BOTTOM MARSH and BROWN BROOK,

Plaintiffs-Appellants,

-against-

RUSSELL E. TRAIN, et al.
["Federal Defendants"], Defendants-Appellees, and
HERITAGE HILLS OF WESTCHESTER, et al.
["Private Defendants"],

Intervenors.

SUN ENTERPRISES, LTD., SOUTHERN NEW YORK FISH AND GAME ASSOCIATION, INC., LYMAN E. KIPP, RICHARD E. HOMAN, NO BOTTOM MARSH and BROWN BROOK,

- against-

ADMINISTRATOR OF THE U.S. ENVIRONMENTAL PROTECTION AGENCY, RUSSELL E. TRAIN,

Respondent, and

HERITAGE HILLS OF WESTCHESTER, et al.

Intervenors.

Appeal from the U. S. District Court for the Southern District of New York

Petition to Review Order of U. S. Environmental Protection Agency

TRANSCRIPT OF DEC Hearing, Volume / of 9

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## THE

## STENOGRAPHIC RECORD

STATE OF NEW YORK
DEPARTMENT OF ENVIRONMENTAL CONSERVATION

In the Matter

of the

Application of HENRY PAPARAZZO and CURTIS McGANN (HERITAGE HILLS) for the acquisition of a source of water supply, etc.

Water Supply Application No. 6284

September 17, 1973 Town of Somers, N. Y.

PAULINE E. WILLIMAN
THOMAS P. FOLEY
CERTIFIED SHORTHAND REPORTERS
41 STATE STREET
ALBANY, N. Y.

October 13, 1973 Ms. Pauline E. Williman 41 State Street Albany, New York 12207 . Re: Heritage Hills Dear Pauline: Thank you for your letter of October 11, 1973, enclosing transcript on Heritage Hills application. We very much appreciate your efficient service. In due course I will check the transcript and advise you of any errors or omissions. Upon receipt of your final statement, I shall forthwith transmit it to the applicants for payment. Sincerely, PFB:b

PAULINE E. WILLIMAN CERTIFIED SHORTHAND REPORTER 41 STATE STREET ALBANY, N. Y. (518) 483-4483 October 11, 1973 Blasi and Zimmerman, Esqs. Westchester National Bank Building 360 North Broadway Tarrytown, New York Dear Mr. Blasi: Enclosed is a certification page to be attached to the Heritage Hills transcript. The October 10th transcript was certified and delivered to Mr. Dickerson personally this morning. May I again thank you and the Heritage Hills people for all the courtesies extended to us during the hearing. Sincerely yours, Realine & Williman Pauline E. Williman PEW/sc

STATE OF NEW YORK DEPARTMENT OF ENVIRONMENTAL CONSERVATION

#### In the Matter

of the

Application of HENRY PAPARAZZO and CURTIS McGANN (HERITAGE HILLS) for the acquisition of a source of mater supply by the development of wells to ultimately supply 1.2 million gallons per day and the construction of a water supply and distribution system to provide service to a planned residential community consisting of approximately 3,000 living units known as Heritage Hills of Westchester County, for the construction of a dam approximately 20 feet high to create a pond having an area of approximately 1.6 acres on an unnamed tributary, known locally as Brown Brook, of the New Croton (Muscoot) Reservoir which is designatedH-31-P-44-18 and which has been classified C(T), for the construction of a sewage effluent discharge structure, and for relocation of approximately 650 feet of the so-called Brown Brook to build a sewage treatment facility.

Water Supply Application No. 6284

TRANSCRIPT OF PROCEEDINGS in the above-

entitled matter at a hearing held by the New York State

Department of Environmental Conservation at the Town Hall,

Town of Somers, Westchester County, New York, on Monday,

September 17th, 1973, commencing at 1:00 P. M.

PRESIDING: WILLIAM J. DICKERSON, JR., Hearing Officer.

#### APPEARANCES:

#### FOR THE APPLICANT:

BLASI & ZIMMERMAN, ESQS. (PETER F. BLASI, ESQ., of Counsel) National Bank of Westchester Bldg. 360 South Broadway, Tarrytown, New York

#### FOR THE DEPARTMENT OF ENVIRONMENTAL CONSERVATION:

JOHN H. HANNA, ESQ., General Counsel to the Department of Environmental Conservation, 50 Wolf Road, Albany, New York (NICHOLAS S. VAZZANA, ESQ., Region III Regional Attorney, of Counsel)

WARREN H. McKeon, Regional Director, Region III

JOHN E. HARRISON, Regional Engineer, Region III

CAESAR MANFREDI, Senior Engineer, Region III

GEORGE DANSKIN, Supervisor of Environmental Analysis, Region III

RALPH MANNA, Regional Environmental Analysis Unit

ROBERT CRONIN, Albany Office of Environmental Analysis.

FOR THE WESTCHESTER COUNTY DEPARTMENT OF HEALTH and THE NEW YORK STATE DEPARTMENT OF HEALTH:

CALVIN E. WEBER, Assistant Commissioner of Health for Environmental Services, Westchester County Department of Health.

#### FOR THE OBJECTORS:

PAULINE E WILLIMAN

#### APPEARANCES (Continued)

WILLIAM J. FLORENCE, JR., ESQ. 105 South Division Street Peekskill, New York Appearing for Sun Enterprises, Ltd. and Mr. Kipp.

HON. NORMAN REDLICH, Corporation Counsel, City of New York, by LOUIS L. WALTERS, ESQ., Assistant Corporation Counsel, of Counsel.

MRS. Anthony M. Saia, Somers, New York

DR. GEORGE E. PORT, Somers, New York

JOHN P. EGAN, Director of Water Quality, New York City Department of Water Resources, appearing for the City of New York

JOHN SPYROPOULOS, Assistant to Director of the New York City Department of Water Resources, City of New York, appearing for the City of New York.

ALBERT F. MALLY, ESQ., Somers, New York, appearing in behalf of the Somers Volunter Fire Department.

MRS. RALPH E. BAHRET, Somers, N. Y.

MR. RICHARD OEHLER, Somers, N. Y. MRS. THEODORE P. DALY, Somers, N. Y.

MISS CECELIA EUSTACE, Somers Road, Somers, N. Y.

#### PARTIES IN INTEREST.

JEREMIAH R. DINEEN, P.E., appearing for the Westchester County Water Agency.

JOHN MUENZINGER, Appearing for the County Department of Flanning

#### APPEARANCES: (Continued)

MR. ROBERT JONA, USDA-SCS, Distri t Conservationist

MRS. DAVID RAUCH, Crane Road, Somers

MRS. JERRY NARDELLI, Warren Street, Somers

MRS. EDWARD GOLDMAN, Crane Road, Somers

#### PROCEEDINGS

MR. DICKERSON: Ladies and gentlemen, my name is William Dickerson. I'm a Hearing Officer and Commissioner's representative for the Department of Environmental Conservation of the State of New York.

This is a hearing before the Department in the matter of the application of Henry

Paparazzo and Curtis McGann for a project known as

Heritage Hills of Westchester, under Water Supply

Application No. 6284, Stream Protection Application

No. 360-24-0051 and Stream Protection Application

360-24-0051, one involving a stream protection project

and one involving the construction of a dam.

We will hear all parties who have filed proper notice and consider the proposal of the applicant for the acquisition of a source of water supply by the development of wells to ultimately supply 1.2 million gallons of water per day and for the construction of a water supply and distribution system to provide service to a planned residential community consisting of approximately 3,000 living units known as Heritage Hills of Westchester located

on approximately 198 acres in the northern portion of the Town of Somers, Westchester County, for the construction of a dam approximately 20 feet high to create a pond having an area of approximately 1.6 acres on an unnamed tributary of the New Croton Reservoir. This tributary is known locally as Brown Brook and has been designated in the state stream classification system as H-31-P44-18. This stream has been classified "C" and has applicable standards C(t) indicating that it is recognized as a trout stream; for the further plans of a sewage effluent discharge structure and for the relocation of approximately 650 feet of the so-called Brown Brook to build a sewage treatment facility.

The determination in this matter will be based on whether the plans as proposed are justified by public necessity, whether they provide for the proper and safe construction of all work connected therewith; whether they provide for the proper protection of the supply and watershed from contamination or provide for the proper treatment; whether they are just and equitable to other municipalities affected thereby and to the inhabitants thereof with

and future necessities for sources of water supply and whether they make fair and equitable provisions, both direct -- for the payment of any and all legal damages, both direct and indirect, which will result from the execution of the plan and for determining whether the construction proposed with the stream protection projects would adversely affect the health, safety and welfare of the people of the state or the natural resources.

I might make a personal comment at this time. This is a public hearing. All are welcome. It is a little bit more than a normal public hearing in that this is a quasi-judicial proceeding of the Department. Only those parties who have filed legal notice may participate. The testimony given by the various witnesses will be under oath and subject to cross-examination. If anyone wishes to make an unsworn statement, this is proper. However, it does not carry, obviously, as much weight as sworn statements or sworn testimony.

At this time, I will call first for the proof of publication of the legal notice.

MR. BLASI: Mr. Dickerson, I offer in evidence the affidavit of publication of William R. Patterson, Jr., principal clerk of Westchester-Rockland Newspapers, Inc., sworn to the 12th day of September 1973, showing by his affidavit the publication of the legal notice provided by the Department of Environmental Conservation in the Northern edition of the -- the Northern Westchester edition of the Reporter-Dispatch on the 23rd day of August and on the 30th day of August 1973.

MR. DICKERSON: Thank you. The affidavit of publication will be received into evidence as Exhibit No. 1.

MR. FLORENCE: Mr. Hearing Officer, I wonder if I might generally inquire of the introduction in evidence of that statement, of the offer of publication.

My name is William Florence and I represent Sun Enterprises, Ltd.

MR. DICKERSON: Do you wish to examine this?

MR. FLORENCE: Yes, sir. Is this the same one as published in the paper, Peter?

MR. BLASI: Yes, sir.

MR. FLORENCE: All right. I would object to its introduction as a misstatement of the law of the State of New York as it's been written in the Environmental Conservation Law in that it fails to provide the appropriate times within which people who would be objectants to this hearing or parts of this hearing could make notice of appearance to object. So I understand the statement here, it says that there is a cutoff date before which certain persons could make, or interested people could make objections and that those objections had to be in writing pursuant to other standards of the code. As I understand that limitation of any time, of several days prior to this hearing would only apply to water supply and that other objections, should they want to object to either sewage or to the stream protection phases of this application, could do so in writing at any time up until the date of this hearing and, accordingly, I would say that this public notice therefore, is defective and renders this hearing, as to those portions, unfair to the public and to the health and safety and welfare of the community in

general.

I'm sorry.

MR. DICKERSON: Your name again, sir?

MR. FLORENCE: My name is William Florence.

MR. DICKERSON: I didn't even get to the introductions yet. Mr. Florence, the proceedings for conducting hearings under the stream protection sections of the law as governed, as directed by the Rules and Regulations of the State of New York, provide that the hearings under those sections of law will be governed by the same rules as the hearings for water supply.

MR. FLORENCE: I would direct your attention to, if I may, certain sections of the Environmental Conservation Law which says that certain objections may be filed up to the date -- up until the time, the date of the hearing, whereas, under the water supply application that the Department may set a cutoff date at a certain number of days prior to the hearing. That provision does not apply to the other sections that are here, for which -- that are here under discussion and for which a public hearing

is now being held.

MR. BLASI: Which section?

MR. FLORENCE: I'll direct -- I will direct your attention, sir, if I may, to the specific sections to which I refer if you'd like me to, sir.

MR. DICKERSON: Which one are you after?

I'm checking it now.

MR. FLORENCE: Well, the 1500 series deals with the deals with the permit, the 500 series deals with the -- the stream protection applications, and I think it's Title 9 sets forth the provisions under which this hearing should be held and unless I'm -- I think it is Subdivision (a) of Part 2 of Section 09 -- 15-0903, "All hearings shall be public except as to those matters where a public hearing may be dispensed with."

MR. DICKERSON: And this is the former Section 431 of the Conservation Law?

MR. FLORENCE: I don't know what former section it is.

MR. DICKERSON: Well, give me your quotation, I can go back to it.

MR. FLORENCE: Well, it's Section

15-0903-2 sub (a). Now, it says in -- that it's the appropriate --

MR. DICKERSON: Yes, 15-0903 which was the former Section 431, and you're referring to paragraph or subsection 2(a) rather?

MR. FLORENCE: In which it says, "No such persons or public corporations other than the applicant may be heard in favor or in opposition unless they have filed a motice of appearance with the Department prior to the date set for the hearing, except that on applications for water supply made pursuant to Title 15 of this article, the Department may designate as provided by subdivision 2 of Section 15-1503 of this article, the last day on which notices of appearance may be filed." Now, it appears to me in your hearing notice here -- that's the end of my quote.

It appears to me in your hearing notice that you have made a cutoff date for which or by which objectants must comply and I'm simply saying that the notice is unfair to the people of Somers because they should be permitted if they are objectants to file a notice of application right up until today.

MR. DICKERSON: Have any objections been so filed?

MR. FLORENCE: I haven't the slightest notion except that your public notice misleads the public if you're intending to advise the public of their interest in this thing. Then it seems to me you shouldn't mislead them.

MR. BLASI: I don't think the public is misled, Mr. Dickerson. In the first place, you -- it was not necessary for the Department of Environmental Conservation to hold a hearing on those matters referred to other than the water supply. In fact, great discretion is given to the Department of Environmental Conservation.

MR. FLORENCE: Do they get -- excuse me.

MR. BLASI: Second, as to the time of the notice, they have the right to fix the time of the notice and in this instance more than ample notice was given and if there are any objections that are filed that came in late or if there's anybody here who may wish to speak as addressed to the items Mr. Florence refers to, we have no objection to it.

MR. DICKERSON: Are there any parties present who wish to object specifically to the provisions of the Stream Protection?

MRS. DALY: Yes.

MR. DICKERSON: Your name, ma'am?

MRS. DALY: Mrs. Theodore B. Daly.

MR. DICKERSON: Did you file any notices

of objection?

MRS. DALY: No, I wasn't even aware of

it.

MR. DICKERSON: O.K. Mr. Florence, the rules and regulations governing the hearings under the Stream Protection Law state that the paragraph you have quoted will be the governing paragraph for all hearings. I will overrule your objection as to the receipt of the notice and it will be received directly into evidence as showing proper legal notice has been published at least for the water supply portions of this proceeding.

Do you withdraw your objection in the face of the applicant's waiver of the strict meaning of the law in that any person who wishes to object strictly to those points --

MR. FLORENCE: Well, I leave my objection on the record, Mr. Hearing Officer. Can I call you "Your Honor?"

MR. DICKERSON: No, Mr. Dickerson will suffice.

MR. FLORENCE: Mr. Dickerson, if I may, and I would hope that you would see fit to allow those people who are objectants who have been misled by a cutoff date to make whatever objections they would have to other portions. I don't object to the water supply cutoff date. As I understand the regulations, that's properly done in your notice. However, your notice, in my judgment and according to my claim misleads the others from being able to be heard.

Secondly, I would say this, that if
they, in reliance on that, did not attend this meeting
because they had not filed the condition precedent,
then they have, of course, been damaged and they cannot be heard unless they were to know, look into my
mind, to know that I was going to make up such an
objection.

MR. DICKERSON: I will do my utmost to insure an equitable proceeding for all parties and

with that understanding at least to get the show on the road, I'm going to proceed.

MR. FLORENCE: I respectfully except, Your Honor.

MR. DICKERSON: I don't think we'll have too many problems.

(The affidavit of publication of the notice of hearing herein was marked and received in evidence as Exhibit No. 1, this date.)

(Continued on page 16)

MR. BLASI: I would add, Mr. Dickerson, with your permission, that it is the position of the applicants that due and proper notice has been given as prepared by the Department of Environmental Conservation and as published, and I do not think that reading the notice can in any way mislead anybody; that if he has any objection or complaint that a hearing is going to be held on all of these subjects which have been so badly set forth in the notice by the Department of Environmental Conservation and if there be any such persons present in this room, we raise no objection, raise no point in opposition to their appearing and being fully heard. We want everybody to be fully heard.

MR. DICKERSON: Thank you.

MR. BLASI: Now, Mr. Dickerson, I would like to offer in evidence or submit toyou as required by the regulation the bill, the invoice, of the Westchester-Rockland Newspaper.

MR. DICKERSON: I will receive the bill for the publication of legal notice. This bill will be certified and returned to the applicant for pay-

ment.

Now, maybe we can get to the introductions. At this time I will note the appearances of the various parties who have filed, and Mrs. Daly, I believe, said she wishes to appear in this proceeding. The Department of Environmental Conservation is represented by Mr. Nicholas Vazzana.

MR. VAZZANA: May I also note other appearances?

MR. DICKERSON: Yes. You are the regional attorney for Region III?

MR. VAZZANA: That is correct. John
H. Hanna, General Counsel, Department of Environmental Conservation, New York State, by Nicholas S.
Vazzana, Regional Attorney, Region III; Warren H.
McKeon, Regional Director of Region III; John E.
Harrison, Regional Engineer, Region III; Caesar
Manfredi, Senior Engineer, Region III; George Danskin, Engineer, Region III, DEC; Ralph Manna,
Engineer, Region III, DEC; Robert C. Cronin, Environmental Analysis, DEC, Albany.

MR. DICKERSON: May I have that please for a moment?

Appearances for the Department of Environmental Conservation, Mr. John H. Hanna, General Counsel, appearing by Nicholas S. Vazzana, Regional Attorney. Mr. Vazzana is just being seated now.

The Regional Director of Region III,
Mr. Warren McKeon, the gentleman to my right; Mr.

John E. Harrison, Regional Engineer for Region III.
Mr. Harrison, would you please stand up, sir? I
think at one time or another we will get everybody
identified.

Mr. Caesar Manfredi, Senior Engineer here with Region III also, is that correct?

MR. MANFREDI: Right.

MR. DICKERSON: Thank you.

Mr. George Danskin, Regional Supervisor of Environmental Analysis from Region III; Mr. Ralph Manna, Regional Environmental Analysis Unit?

MR. MANNA: Yes.

MR. DICKERSON: Mr. Robert Cronin of the Albany Office of the Department from the Office of Environmental Analysis.

MR. VAZZANA: May I note one more ap-

pearance here -- and I am noting this appearance on behalf of Westchester County -- Calvin E. Weber, Assistant Commissioner of Health for Environmental Services.

MR. DICKERSON: Mr. Weber. Mr. Brasi, do you have any other appearances you wish to note at this time?

MR. BLASI: Well, I have my own appearance, Peter Blasi of Blasi & Zimmerman, Attorneys for the applicants, and, of course, we have several witnesses here. I don't know whether you wish --

MR. DICKERSON: You don't have to note your witnesses.

MR. BLASI: No, I am not going to note their appearances. I am here on behalf of the applicant. The others are merely expert witnesses on behalf of the applicant.

MR. DICKERSON: Thank you.

MR. WALTERS: Mr. Dickerson?

MR. DICKERSON: I am going to run down the objections as I have them with no malice aforethought, if you will permit me here.

We have received objections. I will start at the bottom of the pile and work up. Objections have been filed by Mr. Lyman E. Kipp, President of Sun Enterprises, Ltd. Is Mr. Kipp here?

MR. KIPP: I am.

MR. DICKERSON: Mr. Kipp? Mr. Kipp, are you represented by counsel?

MR. KIPP: I am, Mr. William Florence.

MR. DICKERSON: I have received objection from a Mr. and Mrs. Anthony M. Saia. I hope I have it pronounced correctly. Is that right, ma'am?

MRS. SAIA: Saia.

MR. DICKERSON: Is Mr. Saia here?

MRS. SAIA: No, he is not.

MR. DICKERSON: We have received objections from a Dr. and Mrs. George E. Port. Is Dr. or Mrs. Port here?

DR. PORT: We are here, Mr. Dickerson.

MR. DICKERSON: Thank you.

We have received objections by the

Hon. Norman Redlich, Corporation Counsel of the City

of New York. I believe he is represented by Mr.

Louis L. Walters, Assistant Corporation Counsel.

MR. WALTERS: Yes. We have further appearances in that order. You have two written letters, here, June 14th, 1973 and August 23rd, 1973 stating the objections of the City of New York to the two separate notices sent here, and there are further appearances here: John P. Egan, Director of Water Quality of the New York City Department of Water Resources and John Spyropoulos, Assistant to the Director of the New York City Department of Water Resources, New York City. I have these written here (indicating).

MR. DICKERSON: Thank you.

We have received objections from the

New York State Department of Health on their own

behalf and on behalf of the Westchester County

Health Department and signed by Mr. Gilbert Faustel.

He filed a notice of appearance in opposition to

the project on behalf of Mr. Calvin Weber and Mr.

George Phillip. Mr. Phillip?

MR. WEBER: Mr. Phillip is not here.

MR. DICKERSON: Mr. Fastel?

Mr. Weber?

MR. WEBER: Mr. Weber is representing.

MR. DICKERSON: Thank you. Mr. Weber,

you will be representing the County only?

MR. WEBER: The County and the State Health Departments.

MR. DICKERSON: You will be. Thank you.

We received objections from Mr. and Mrs. Ralph E. Bahret. Mrs. Bahret, is that the correct pronunciation?

MRS. BAHRET: Yes.

MR. DICKERSON: Thank you.

We have received objections from a Mr.

Albert F. Mally, an attorney for the Somer Volun-

teer Fire Department. Is Mr. Mally here?

MR. MALLY: Yes, I am present, sir.

MR. DICKERSON: Thank you.

We have received objections by a Mr.

Richard Oehler. Is that the correct pronunciation?

MR. OEHLER: That is correct.

MR. DICKERSON: Thank you.

Mrs. Daly, could I have your full

name, please?

MRS. DALY: Mrs. Theodore P. Daly,

D-a-1-y.

MR. DICKERSON: Theodore T.?

MRS. DALY: Theodore P. as in Peter.

MR. DICKERSON: Could I have your address, please?

MRS. DALY: Box 75, Somers.

MR. DICKERSON: Thank you.

MRS. DALY: I'm a rebutter.

MR. DICKERSON: We'll get to the position statements in a minute. Previous to the notice of hearing --

MISS EUSTACE: Excuse me, Mr. Dickerson. In the light of Mr. Florence's statement, I would like to add my name to the list of objectors.

MR. DICKERSON: And you are objecting to the stream protection aspect of this project, right?

MISS EUSTACE: Right.

MR. DICKERSON: And your name please?

MISS EUSTACE: Cecelia Eustace,

E-u-s-t-a-c-e.

MR. DICKERSON: And would you spell

your first name?

MISS EUSTACE: C-e-c-e-l-i-a.

MR. DICKERSON: And your address,

please?

MISS EUSTACE: Somers Road.

VOICE FROM THE FLOOR: The same --

MR. DICKERSON: Well, can I run

through some other names here and I may pick you up.

Just a second, please.

The Department had issued a notice of application for initial public response before the hearing was scheduled and we did have some responses at that time, and I wanted to check and see if any of those people had appeared. Dr. and Mrs. Port have already refiled, Mr. Walters again.

Miss Eustace, are you representing the other people who signed that initial letter also?

MISS EUSTACE: Yes, I am.

MR. DICKERSON: Thank you. The notice by Dempsey, Spring, O'Keeffe and Florence signed by William J. Florence, Jr. on behalf of his client.

MR. FLORENCE: I am still here.

MR. DICKERSON: Do you want these incorporated then as objections in addition to Mr. Kipp's letter?

PAULINE

MR. FLORENCE: Speaking for myself, I do, yes.

MR. DICKERSON: We've received a notice requesting a notice of appearance by Mr. William G. Borghard, Department of Environmental Facilities of Westchester County. Is Mr. Borghard here?

MR. DINEEN: Jeremiah Dineen, Westchester County Water Agency.

MR. DICKERSON: Mr. Jeremiah Dineen, Westchester County Water Agency.

We also received a request to be considered a party in interest by the Westchester County

Department of Planning signed by Peter J. Eschweiler, Commissioner. Is Mr. Eschweiler here?

MR. MUENZINGER: I am John Muenzinger, representing the County Department of Planning and the Westchester County Soil Conservation District.

My name for the record is spelled M-u-e-n-z-i-n-g-e-r.

MR. DICKERSON: Mu-e-n?

MR. MUENZINGER: M-u-e-n-z-i-n-g-e-r.

I wish to also have on the record, with your per-

mission, the presence of Mr. Robert Jonas, USDA-SCS, District Conservationist.

MR. DICKERSON: Is Mr. Jonas here?

MR. JONAS: Yes.

MR. DICKERSON: Thank you.

Mr. and Mrs. Saia, Mr. Kipp, I thought there were other parties who might have previously expressed an interest in this hearing. There are two ladies who indicated --

MRS. RAUCH: Yes, Mrs. David Rauch, R-a-u-c-h.

MR. DICKERSON: R-a-u-c-h?

MRS. RAUCH: Crane Road, C-r-a-n-e.

MR. DICKERSON: Crane.

MRS. RAUCH: Yes.

MR. DICKERSON: Somers?

MRS. RAUCH: Yes.

MR. DICKERSON: And?

MRS. NARDELLI: Mr. and Mrs. Nardelli,

Jerry Nardelli.

MR. DICKERSON: Gerald?

MRS. NARDELLI: Jerry.

MR. DICKERSON: N-a-r--

MRS. NARDELLI: --d-e-1-1.

MR. DICKERSON: And the address, please?

MRS. NARDELLI: Warren Street, comers.

MR. DICKERSON: Thank you.

MRS. GOLDMAN: Mrs. Edward Goldman,

Crane Road.

MR. DICKERSON: Anyone else who wishes to have their appearance noted formally?

(There was no response.)

MR. DICKERSON: At this time, in the normal proceedings -- I don't have enough copies to pass around of the order of business. I'll outline it. We've run down the notices of appearance. We have received the proof of publication. In the normal course of events, to clarify the issues and let everyone else know where each one stands or sits, I'd like a brief general statement from each party of your interest in this proceeding.

I'll call first on Mr. Blasi, and then we'll go down the various people who have filed notices or wish to appear here today. This will not make or break your case, obviously. It's just a brief statement of what your interest is, whether

you are in favor of the project, against it, your position, and then we will start for each person's case, a presentation of a positive case.

It will start with the applicant, who will present various witnesses testifying to the various aspects of the project. These parties will be speaking under oath and subject to cross-examination by the parties who have indicated their interest and this will proceed then through the end 'til all parties have been heard.

Whenever we reach that point, we will have a reverse order summation. I will give Mr. Hasi the second last word, and I will reserve the last word for myself, but this is generally the way we will proceed.

As I indicated, this is a public hearing. All are welcome. I would like to point out we are taking a stenographic record of this hearing and I will ask your cooperation in keeping things as reasonably quiet as possible. It may be getting a little warm in here. If any of you gentlemen wish to remove your coats or otherwise make yourselves comfortable, please feel free to do so.

Mr. Blasi, a brief statement.

MR. BLASI: Since you have read the notice of hearing in substance, Mr. Dickerson, I will not go into that or the purpose of the meeting. You have explained it very carefully to this assemblage.

By way of background, an amendment was adopted to the zoning ordinance of the Town of Somers by the Town Board on March 14, 1972. It was effective March 30, 1972, Section Number 72.02 entitled "Designed Residential Developments."

As defined in the ordinance, a designed residential development is a group of residential buildings constructed or to be constructed as a unified project under a general land use and development plan which is approved and has to be approved in accordance with the requirements and the other applicable requirements of the sections of the zoning ordinance.

Briefly, without going into great detail, it is the intent and purpose of the regulations to permit the establishment of a designed residential development where the subject property

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consists or comprises at least 500 acres of land having contiguity, except for any dividing streets, public or private, on which any tract or portion thereof may have frontage. The type of development contemplated and envisioned and proposed is a planned adult condominium type of community.

In pursuance of the provisions of the amendment, an application was made, processed and granted for a special exception use permit for a development to be known as Heritage Hills of West-chester in accordance with the general land use and development plan. The residential portion itself contains approximately 836 acres of a total of 917 acres, plus or minus, which are owned by the petitioners in this matter. Mr. McGann, in his testimony, will elaborate somewhat on that.

The applications were granted upon the conditions as set forth in the resolution adopted by the Zoning Board of Appeals of the Town of Somers on November 21, 1972. The Town of Somers has, as such, no public water supply or sewage facilities in the area of the development. The special exception use permit contemplates the obtaining

of approval by the regulatory agencies, meaning all the agencies, state and local, county level, that have jurisdiction over the applications with reference to a water supply system and a sewage treatment and disposal system.

We are well aware of the fact that since this area in Somers is within the watershed of the City of New York, that the law gives the City of New York, who are here by their representatives, a standing in this proceeding.

Mr. Dickerson, it is the purpose of the ordinance and the intent of the enabling provisions that the expense of the creation and installation of a water supply system and a sewerage system for such development be borne entirely by the developers and at no cost to the Town of Somers. I emphasize this point because many of the sections of the Department, the DEC, if I may call it that, have reference to -- or rather, the Environmental Conservation Law -- have reference to actions taken by municipalities. The philosophy of the statute is that we must at our expense provide these functions, these services, to the inhabitants

of this Heritage Hills of Westchester.

amateurs, I would say, if I may take the license to say that. They have engaged inother projects, and the most outstanding one is, of course, the Heritage Village of Southbury, Connecticut, which has its own sewer system and has its own water system and is in operation there and has been for seven years.

(Continued on Page 33)

MR. BLASI: (Cont'g.) Now, with reference to this notice in the proceedings, Mr. Dickerson, we of course have the water system, we have the sewerage system and we have the specific items under the law so it is my intention first to review specifically and briefly what we propose to bring before you in the way of factual information, data and proof as to the water system, then as to the sewerage system and then we have the engineers present with respect to those specific items which have been made by the Department, a matter for this public hearing.

With respect to the water system, the following has been completed to date, and may I say parenthetically that in every instance the developers have sought to comply with the standards of both --

MR. DICKERSON: You want to present that into the opening of your case then, or is there anything else you want to add, just the scope of your position? I don't want to chop up your opening remarks too much.

MR. BLASI: No, I just want to say two more things. I know that I have to be brief. I just

want to tell you that a water district was formed at the request of the Department of Health. I think your record shows that there is a water works corporation that has been formed with the consent of the regulatory agency and that that corporation was created. That's in the record. We supplemented the application by a communication to indicate that and we have here Mr. McPhee of the engineering firm who will give you the details with reference to the water system. Mr. McPhee is also the engineer for the applicant with reference to the sewer system. We have Mr. Leonard Bibo of Bibo Associates. He's a consulting engineer and site design engineer. He'll refer to the other items. We have Mr. Curtis McGann, one of the principals, who is familiar with the factual details of the project, and there are other persons associated with us who we may, if the necessity occurs, call upon to supply further information.

MR. DICKERSON: Thank you.

Mr. Vazzana, do you have any statement you wish to make at this time?

MR. BLASI: Mr. who?

MR. VAZZANA: Vazzana, V-A-Z-Z-A-N-A.

Your Honor, I represent the Department of Environmental Conservation. The public notice has been offered in evidence --

MR. DICKERSON: Could you speak up so we could all hear?

MR. VAZZANA: Yes. The public notice as it has been offered in evidence I believe is Exhibit 1 and speaks, of course, for itself.

Now, the Department is interested in various aspects of this particular project, particularly the air pollution source construction --

A VOICE: The what?

MR. VAZZANA: Air pollution contamination source construction, public water supply, stream protection, the waste disposal construction and if there be any aspects of any industrial waste disposal system construction. We're interested, of course, in the location of the particular site for the construction, the sewage disposal units, the effect it will have upon the streams, the effect it will have upon the environment, the effect it will have upon the community, on all aspects which are covered under the Rules and Regulations of the Department of

Environmental Conservation as well as the Environmental Conservation Law.

Now, briefly, I have outlined what we are mainly interested in and, however, we'll develop that as it goes along.

MR. DICKERSON: Thank you. Mr. McKeon and the other parties have had their appearances formally noted. Do you wish to make individual statements, gentlemen?

MR. McKEON: I think we'll rest with what Mr. Vazzana has said.

MR. DICKERSON: Thank you.

Mr. Weber?

MR. WEBER: I can pretty well conclude mine in the State Health Department's situation at this point if you'd like.

MR. DICKERSON: That's why I indicated to you once before, Mr. Weber, don't withdraw completely from the proceedings. You may want to ask a few questions.

MR. WEBER: O.K. I will be commenting on behalf of the Westchester County Department of Health and the New York State Department of Health

primarily with respect to the water supply application and I'll develop that at a later time.

MR. DICKERSON: Thank you.

Mr. Florence, will you be speaking for Mr. Kipp or will you both be participating?

MR. FLORENCE: Well, on crossexamination I'll be the only one who asks questions.
On direct, I will use two witnesses at least and the
basis of our objections essentially deals with the
points that we are the recipients of the sewage and
so that we have some certain objections to that and
the ability of the stream with which we have had
numerous conferences and consultations with some of
the departments who are here represented as well as
the parties who are in interest and the applicant.
Second of all, we have at least four siggested alternatives.

I'd say at the outset, we don't have

a -- we're not against the concept nor are we against
the use of the property as it is contemplated and as
it's been passed. Our experience so far has been
that the concept as permitted by the ZBA has been
violated in several ways already and we would hope

that there would be some compliance at least as it would affect us or my client.

Nery briefly, our suggestions were,
number one, that we would provide a site at the south
end of the Kipp property which encompasses approximately 500 acres lying between Routes 100 and 202 and
physically at a lower level and elevation than the
applicants' parcel. We would provide that without
charge for the sole and exclusive use of the treatment
of the applicant's sewage so that we wouldn't be the
receivers of the sewage effluent throughout the
stream that would traverse the entire length of the
property.

Secondly, in the alternative, we would also propose that we would provide without expense or not charge, or provide an agreement where they would be able to use another stream which had a gradient drop of approximately 60 feet rather than this flat stream, the Brown Brook, that's been referred to which is a much wider stream which would have a better capacity and ability to take the water as it's discharged from this -- from a plant if they wanted the plant on their own property.

which exists and is, to my knowledge, not classified and, therefore, subject to less state interest with the municipalities and subdivisions and regulations which starts at Summit Lake and traverses the property here under review which is part of two applications, part of the DRB, if I can use that shortening for the designed residential development and/or part of the water works application for a water district and for the sewage district. In other words, that stream is within that territorial area and which would ultimately discharge in the same place, namely, the Muscoot River except in a place to the north of where the present Brown Brook discharge place would be.

I'll reserve any other further comments.

I think I've said essentially enough.

MR. DICKERSON: O.K. Thank you.

Mrs. Saia, do you want to --

MRS. SAIA: I'm speaking an objection for my husband and myself. We are objecting to the location of the sewage treatment plant mainly because it is so close to the residential area that is

already there. There are over 900 acres. I feel sure they could find another place for it. We're also objecting to the relocation of the stream. We feel that there will be considerable damage to our pond which has already been damaged and there is so much mud and sediment there now that we feel that if this is relocated our pond may become a health hazard. We are also objecting to wells. We want to know what effect it will have on our own water supply and the existing drainage patterns. That's basically our objections.

MR. DICKERSON: Thank you.

Dr. or Mrs. Pratt, do you have a

statement?

DR. PORT: That's Port, Mr. Dickerson.

Neither Mrs. Port nor I at this time --

MR. DICKERSON: Excuse me.

DR. PORT: -- or at any time in the past have raised objection to this particular project as a project. In fact, we have affirmatively supported this project as a project. Our objections are basically within the realm of the public notice. We are neither engineers nor attorneys. There was

discussion earlier concerning the legality of this public notice. From our point of view with respect to certain objections which we have, we think the public notice is quite good. Specifically, I am reading directly from the public notice as to our objections.

We object to the source of water supply by the development of wells to ultimately supply 1.2 million gallons per day. We object to the construction of a dam approximately 20 feet high to create a pond having an area of approximately 1.6 acres without any recourse to damages should that fail. We object to the construction of a sewage effluent discharge structure which is much larger than its original structure as indicated to the town and we object to the relocation of approximately 650 feet of the so-called Brown Brook to build a sewage treatment facility plant.

We are also interested in whether they make fair and equitable provisions for the determination and payment of any and all legal damages to persons and property.

Thank you.

MR.DICKERSON: Thank you. Good.

Excuse me for mispronouncing your name.

I might point out that, you know, you have the right to appear by counsel or with counsel during the course of this proceedings if you wish to or you can represent yourself. This goes for any parties.

Mr. Walters.

MR. WALTERS: Yes.

Mr. Examiner, the city has, by its

letter of June 14th, 1973 filed herein, set forth in

plain clear language that its concern is with its

water supply. The water supply here, Muscoot Reser
voir and its tributaries, not only supply eight

million people in the City of New York but they also

supply various Westchester communities with water

and they are dependent on it.

Now, it's clear by law, Public Health
Law, Section 70 which we've set forth, that any sewage
disposal plant to be constructed or altered or changed
-- and I gather from here that if the present one is
changed and the present one we still haven't approved
-- so if there's another one, we have to start all

over again. So I would want the people here to know that the concern of the city is mandated by law, that if sewage disposal goes into our water reservoir, we'rein trouble and we have a right under the law to oppose that and that's why we're here.

MR. DICKERSON: Thank you.

Mr. Weber, do you wish to appear under any of your other hats?

MR. WEBER: No, I think I'm under both of them already.

MR. DICKERSON: I'm going to, for the sake of calling appearances if you don't mind, I'll cross your name off under the Health Department title and we'll just call upon you once.

Mrs. Bahret?

MRS. BAHRET: I'd like to note that my husband has arrived so he's here also.

MR. DICKERSON: Mr. Bahret.

MRS. BAHRET: Our concerns are twofold:

Firstly the wells. What's going to happen to our

wells and that of our neighbors who happened to be

here first. Are we going to be without water?

Secondly, the sewage treatment plant.

We feel with over 900 acres that it does not have to be placed right there where it's in full view of all our homes. Certainly they can find another place to put it where it won't be visible, and also how about some money to guarantee that if those of us here have problems, if we lose our water supply we do not feel that we should have to bear the burden of replacing our wells.

Thank you.

MR. DICKERSON: Thank you.

Mr. Mally, on behalf of the Somers Volunteer Fire Department.

MR. MALLY: Yes, Mr. Dickerson, I am here representing the Somers Volunteer Fire Department, to appear on their behalf pursuant to a notice that we have filed with the Department of Environmental Conservation dated September 1st, 1973.

The interest of the Somers Volunteer

Fire Department is such that we are the owners of

certain property on the south side of Route 202 dir
ectly opposite Warren Street, upon which there is a

pond and evidently this pond is fed by the so-called

Brown Brook which is the subject of the proposed

project and which pond is also fed by Brown Brook.

The interests simply of the Somers

Volunteer Fire Department is concerning the construction of the sewage effluent discharge structure, the construction of the dam and the relocation of Brown

Brook to build a sewage treatment facility. This generally is our interest in the particular procedure.

We wish to preserve our right to be heard and at this point, we neither speak for nor against the project and we are reserving our right to be heard.

MR. DICKERSON: Thank you.

Mr. Richard Oehler.

MR. OEHLER: I'm a nearby resident of the project and I'm not apposed to Heritage Hills development. However, as I read the reports, both the sewerage treatment facility report and the water supply report, I have many questions and as it now stands, I am opposed to the current location of the wells, the source of the water, the location of the sewerage treatment plant.

MR. DICKERSON: Thank you.

Mrs. Daly.

MRS. DALY: In answer to Mr. Blasi's

reference to Section 72.02, I should also like to include my husband's reference to Section, I believe it's 134 which was covered in two briefs that my husband submitted at the time the hearings were under way.

MR. DICKERSON: This is Town Law?

MR. BLASI: Yes.

MRS. DALY: Oh, I'm not sure. I can check that out.

MR. DICKERSON: At this time, you don't have to present all your case. Just are you in favor of it, are you against it or are you in favor of it except for a couple of things?

MRS. DALY: No, I'm thoroughly opposed.

I should like to make further reference to Mr.

Blasi's statement wherein he said all this was taking place without any cost to the Town of Somers but I'm concerned about the residents, myself especially, since the brook goes through my property and, furthermore, I can't understand why a natural flowing stream should be disturbed because of a man-made construction and, furthermore, at the outset when Heritage Hills submitted their -- I don't know if it's a plan or a

plat but it was very anemic looking and at the time that I asked where the sewage treatment plant was going to be located, I believe their PR man referred to the exact areas being the letter "A" which appeared in the designation "Utility Service Area." At that time there was no -- my recollection, if it's correct, it showed no stream flowing through there which means to me that, obviously, they knew the stream was going to go through the center of their sewage treatment plant.

We, of course, were unaware of it.

I think that just about covers it.

MR. DICKERSON: Thank you,
Miss Eustace.

MISS EUSTACE: Like my fellow residents of Somers, I question the location of the treatment plant, especially since it's built near a present stream and this stream greatly affects my neighbors and also the Town of Somers, particularly the fact that the stream does carry into the New York City reservoir system. It does flow through the pond located on Somers Road, 202, and Warren Street, which belongs to the Saias and Ports.

I also question the construction of a dam, what purpose a dam is going to serve and why it's located at this particular spot. Thank you.

MR. DICKERSON: Thank you.

Mr. Dineen.

MR. DINEEN: The Westchester County
Water Agency has reviewed the water supply reports
of Heritage Hills of Westchester prepared by its
consulting engineers Nebolsine, Toth, McPhee Associates.

We support the general concept of making maximum use of the available ground water resource to pump a water supply as proposed. West-chester County has a very limited ground water resource that represents less than 5 percent of the total water consumed in the county. The exploratory investigation for Heritage Hills indicates an aquifer is available that can be developed by construction of gravel-packed wells. We feel this resource should be developed as proposed with the use of Shaft 11 of the Delaware Aqueduct as a future possible secondary source of the proposed development.

In the event this source is proposed

in the future, the taking, treatment and transmission facilities should be in concert with overall goals of the water agency for countywide use of this source.

The Westchester Coun, Water Agency has reviewed this application only from its water supply aspects and we have not reviewed any of the other considerations.

MR. DICKERSON: Thank you.

Mr. Muenzinger. Will you be making -excuse me -- separate statements on behalf of the
Soil and Water Conservation District and the Planning
Department or --

MR. MUENZINGER: No, sir, I will not.

MR. DICKERSON: One statement?

MR. MUENZINGER: I have no statement to make and will support the interests as expressed by the Westchester County Water Agency and the Westchester County Health Department as well as the New York State Department of Environmental Conservation.

MR. DICKERSON: Just wanted to know which hat you were wearing as you appear at various times.

MR. MUENZINGER: Our primary concern is with the volumetric balance of ground water

recharge versus production.

MR. DICKERSON: Thank you.

MR. MUENZINGER: Thank you.

MR. DICKERSON: Mr. Jonas, would you have any separate statement or are you appearing with Mr. Muenzinger?

MR. JONAS: I'm with Mr. Muenzinger.

MR. DICKERSON: Mrs. Rauch, do I

pronounce it correctly?

MRS.RAUCH: Rauch. I'm opposed to the location and type of sewerage plan and would like some kind of guarantee from the existing water supply that it will not be disturbed.

MR. DICKERSON: Thank you.

Mrs. Nardelli?

MRS. NARDELLI: My husband and I object to the location of the sewage disposal plant and the change in the location of the stream. First of all, we are abutted on two sides by Heritage Hills. I feel that we're getting the full brunt of it. I feel that our property will also be devalued.

MR.DICKERSON: Thank you.

And Mrs. Goldman?

MRS. GOLDMAN: Yes. I'm here for self protection. We want some kind of recourse if our well runs dry and relocation of the sewage treatment plant.

MR. DICKERSON: Thank you.

At this point, I will again invite the gentlemen to take their coats off if they start to feel like it now. I think we've pretty much summed up where everybody stands.

Mr. Blasi, are you ready to continue or would you like to take about a two- or three-minute break so everybody can relax a little bit.

MR. BLASI: It's entirely up to you, Mr. Dickerson.

MR. DICKERSON: Why don't we take about five minutes and inhale or exhale as the case may be.

MR. DICKERSON: At this time we will continue the hearing. We will start with the presentation of the case by the applicant. Mr.Blasi -- Oh, one thing I might poin out.

There's been a question raised as to the use of tape recorders during this proceeding. While I personally have no objection to the use of tape recording, I would make the following comments: The official record and the only legal record of this proceeding is that being taken by the two Certified Public Shorthand Reporters present, and I must caution and advise you that any rebradcast of any proceedings in which a witness may be summoned by subpoena is a violation of the New York State Civil Rights Act. If you have a recording, it is not official, it has no legal standing and it may not be rebroadcast without violating the New York State Civil Rights Act.

Mr. Blasi.

MR. BLASI: I think at this point there should be a presentation of the papers.

MR. DICKERSON: O. K. We will mark them for identification at this time.

MR. BLASI: I ask that there be marked for identification the petition of Henry Paparazzo and Curtis McGann. This was verified the 26th day of April, 1973 and also having attached thereto the consent of H and H Land Corporation, which was also duly acknowledged.

MR. DICKERSON: The petition does not have to be marked as an exhibit. It stands on its own two feet, if I may use that term or phrase.

MR. BLASI: Yes, sir.

MR. DICKERSON: The petitions, normally in these proceedings are accompanied by several exhibits which we will now identify.

MR. BLASI: The second item, Mr. Dickerson, that was submitted with the petition and marked Exhibit A annexed to the petition was a letter of Mr. Calvin Weber, a copy of the letter of Mr. Calvin Weber, to the Supervisor and Town Board, which consented to the formation of a Heritage Hills Water Works Corporation.

MR. DICKERSON: For identification Exhibit Number 2. It's a letter dated April 24th, 1973, on the stationery of the Westchester County

Health Department addressed to the Supervisor and Town Board of the Town of Somers and signed by Calvin E. Weber, P. E.

(A copy of a letter dated April 24th, 1973, was marked for identification as Exhibit Number 2, this date.)

MR. BLASI: Mr. Dickerson, may I take the liberty at this point, since Mr. Weber is in the room -- would you look at it, Mr. Weber, because I don't want to ask you formally later on.

MR. VAZZANA: May we have that statement read which Mr. Blasi just made prior to the submission?

MR. DICKERSON: These are just being marked for identification at this time, sir.

MR. BLASI: I merely asked that Mr.
Weber identify it because that would save me the
trouble later on, having him identify it. It was
a letter from him to the Town Board.

MR. VAZZANA: I see.

MR. BLASI: Now, Exhibit C annexed to the petition, the general layout of water supply system, has annexed to it the signature of Walter McPhee, P. E. and the seal of Mr. McPhee as engineer.

Pardon me, did I give you "C" by mistake? I'm sorry; there is one ahead of that, "B".

MR. DICKERSON: Do you want to switch

them?

MR. BLASI: Yes, "B" is the general location map.

MR. DICKERSON: For identification, Exhibit 3 is a map entitled "General Location Map,
Heritage Hills of Westchester," prepared by Nebolsine, Toth and McPhee Associates, signed and sealed with the professional engineer's seal of Mr. Walter McPhee.

Exhibit Number 4 for identification is a general layout of the water supply system, Heritage Hills of Westchester, prepared by the same engineering firm, also signed and sealed by Walter McPhee.

(The above-described documents were marked for identification as Exhibits numbered 3 and 4 respectively, this date.)

MR. BLASI: Exhibit D attached and submitted with the petition, Mr. Dickerson, is the water supply report bearing date March 1973, prepared by Nebolsine, Toth, McPhee Associates, signed Walter McPhee and bearing the seal of Mr. McPhee as a licensed P. E.

MR. DICKERSON: The water supply report dated March 1973 for identification is marked Exhibit Number 5.

(The water supply report dated March

1973 was marked for identification as Exhibit Number

5, this date.)

MR. BLASI: Exhibit E is a copy of the report by Lauman Laboratories, report of chemical analysis dated November 3, 1972, Lauman Laboratories, Inc. That's Exhibit E attached to the petition.

MR. DICKERSON: For identification, Exhibit Number 6 is a report of chemical analysis dated November 3rd, 1972, by Lauman Laboratories, Incorporated, indicating a report of chemical analysis of water from Well Number 3 at Heritage Village.

(The report of chemical analysis dated November 3, 1972 was marked for identification as Exhibit Number 6, this date.)

MR. BLASI: Mr. Dickerson, do you have

the undertaking?

MR. DICKERSON: I thought it was in the stack that I handed you.

MR. BLASI: Oh, I beg your pardon.
There are some more papers here.

MR. DICKERSON: All right.

MR. BLASI: Mr. Dickerson, I ask to be marked for identification a transmittal letter -this is not the transmittal letter. This is the supplemental letter. You don't have it? All right, then I will not have it marked.

MR. DICKERSON: This letter you want marked?

MR. BLASI: Yes.

MR. DICKERSON: For identification,
Exhibit Number 7 is a letter to the New York State
Department of Environmental Conservation signed by
Peter F. Blasi dated May 18, 1973, indicating that
the Town Board of the Town of Somers consented to
the formation of the Heritage Hills Water Works
Corporation and indicates that the certificate of
incorporation was received by and filed with the
Department of State. For identification that's Ex-

hibit Number 7.

(The letter dated May 18, 1973 was marked for identification as Exhibit Number 7, this date.)

MR. BLASI: I offer for identification the water supply application undertaking signed by Henry Paparazzo and Curtis McGann and also by Peter F. Blasi on the 26th day of April, 1973, acknowledged on the 27th day of April.

MR. DICKERSON: The undertaking form for a water supply application, Form DWR 57 of the New York State Department of Environmental Conservation is marked as Exhibit Number 8 for identification.

(The water supply undertaking was marked for identification as Exhibit Number 8, this date.)

MR. BLASI: I offer for identification the waste water facilities report of March 1973 prepared by Nebolsine, Toth, McPhee and Associates.

MR. DICKERSON: The waste water facilities report dated March 1973 is marked as Exhibit Number 9 for identification. (The waste water facilities report was marked for identification as Exhibit Number 9, this date.)

MR. BLASI: Excuse me just a second.

Mr. Dickerson, there is another waste water facilities report earlier, dated December '72, with Nebolsine, Toth, McPhee Associates, consultants. The other report is a later report, and there may be some additional material with reference to that, but I think since it's in the file, we'll have to ask to have that marked for identification.

MR. DICKERSON: A waste water facilities report dated December 1972 will be marked for identification as Exhibit Number 10. I take it you wish the later report to stand as the correcting document?

MR. BLASI: I would like that to stand as a later document and it is a correcting document. There may be additional material to that report.

I just want to alert the examiner to that.

MR. DICKERSON: We can wait until we get to it.

MR. BLASI: Yes, we'll wait 'til we get to it.

MR. DICKERSON: For clarity then, Exhibit 9 is a waste water report dated March '73 and Exhibit 10 is the waste water report dated

December 1972.

(The waste water reports dated March 1973 and December 1972 were marked for identification as Exhibits numbered 9 and 10 respectively, this date.)

MR. BLASI: I ask that there be marked for identification a brochure prepared by Heritage Development Group of the proposed residential community for Town of Somers and it's stamped as received April 27, 1973.

MR. DICKERSON: For identification,

Exhibit Number 11 filed with the original papers

submitted is a brochure with the caption "Heritage Hills of Westchester, a Planned Residential

Community for the Town of Somers, New York," prepared by the Heritage Development Group, Inc. The
introduction indicates this appears to be a master
plan for Heritage Hills of Westchester involving

various points of interest concerning the land region, the site; for what it's worth, it's marked as

Exhibit Number 11.

(The brochure entitled "Heritage
Hills of Westchester, a Planned Residential Community for the Town of Somers, New York," was
marked for identification as Exhibit Number 11,
this date.)

MR. BLASI: I ask that there be marked for identification a preliminary five-week biological base line survey of September 29th, 1972 submitted with the application.

MR. DICKERSON: For identification,

Exhibit No. 12 is a preliminary biological base line
survey of the Heritage Hills of Westchester project
signed by Dr. Emanuel V. Sorge, dated September 29th,
1972.

(The preliminary biological base line survey described above was marked for identification as Exhibit No. 12, this date.)

MR. BLASI: Now, Mr. Dickerson, there will be some other documentary evidence that will be submitted as we proceed with the testimony of the witnesses. I don't want this to indicate that these are all the documents that the applicant has before it.

Now, at this time I would like to ask
Mr. McGann if he would step forward.

## CURTIS McGANN,

having been called as a witness for and in behalf of the applicant, having been first duly sworn, was examined and testified as follows:

MR.DICKERSON: Would you be seated, state your name, address and affiliation with the project.

THE WITNESS: My name is Curtis McGann.

I live in Woodbury, Connecticut, Main Street, and I
am a general partner with Henry Paparazzo in the
project.

MR. BLASI: Mr. Examiner, I'm going to ask Mr. McGann if he will proceed with his testimony. He happens to be a member of the Bar and I think he can supply the information in capsulated briefer form and this might expedite the hearing somewhat, with your permission.

MR. DICKERSON: Certainly. I'm sure the other members of the Bar will be looking forward to this.

THE WITNESS: I'll try to be brief.

MR.DICKERSON: Mr. McGann.

## DIRECT TESTIMONY

THE WITNESS: Henry Paparazzo and I are applicants before this proceeding. H & H Land Corporation, of which I am president, has consented to and joins in the application. H & H Land Corporation is merely a nominal holder of title of the subject property in trust for the beneficial owners, Henry Paparazzo and myself.

Mr. Paparazzo and I have been associated for many years and have been involved actively in the development of a number of projects, among which Heritage Village in Southbury, Connecticut is a project very similar to the Heritage Hills of Westchester project.

Heritage Hills of Westchester is a designed residential development which will, upon completion, consist of approximately 3,100 residential units on 836 acres held in the condominium form of ownership. Each building will be small in scale and contain between two and six residential units. They will be clustered to maximize open space.

Additionally, various building types have been designed for the different types of terrain

on the site. The objective in so doing is to preserve the natural character of the site and fit the buildings to the terrain.

Support facilities will be provided consisting of recreational and activities amenities. There will be a 27-hole golf course, swimming pools, tennis courts, paddle tennis courts, auditorium facilities, men's and women's clubs, meeting rooms and many other amenities.

Additionally, water and waste water utility systems will be installed at the expense of the developer. All utilities services will be transmitted underground. Heritage Hills will provide restrictive age standards as to occupancy of condomin um units. One member of the family must be 40 years of age or older and no children under the age of 18 may permanently occupy a unit. For greater detail and definition of the program, reference is made to the general land use and development plan submitted to and approved by the Zoning Board of Appeals of the Town of Somers.

Financing for the total project has been provided under a mortgage loan from Marine

Midland Bank Western. The building loan contract dated April 13, 1973, which is a public record in the office of the County Clerk in White Plains, sets forth the details of the financing. The mortgagee has undertaken to supply a line of credit in the amount of \$18½ million. Additionally, insurance protection has been made available to compensate for any possible damages to property or injury to persons causally related to the negligent acts of the developers or their agents.

Our studies and experience indicated that there was a need and demand in Westchester County and particularly the northern area of Westchester County for adult condominium housing. This was recognized by the Town of Somers and was expressed in the amendment to the zoning ordinance and in the resolution of the Zoning Board of Appeals adopted in pursuance of that ordinance granting the special exception use permit for the project. In the interest of efficiency and brevity, I think that it would be wise for me at this time to ask either Mr. Blasi or yourself, Mr. Dickerson, to pinpoint any questions that you might want to have amplifi-

cation on.

MR. BLASI: Well, I would like at this time, Mr. Dickerson, to offer in evidence a certified copy of the zoning ordinance of the Town of Somers with amendments to date and which contains the section referred to as 72.02 providing for the designed residential development.

MR. DICKERSON: For identification,
Exhibit No. 13 is a zoning -- copy of the zoning
ordinance of the Town of Somers, New York. The
cover says "Effective April 26, 1959." The certification by the Town Clerk of the Town of Somers
indicates that this is the sole and true copy of
the zoning ordinance of the Town of Somers as dated
September 12th, 1973.

(The copy of the Town of Somers zoning ordinance described above was marked for identification as Exhibit No. 13, this date.)

MR. BLASI: And may I offer it in evidence?

MR. DICKERSON: Any objection to having it received into evidence?

(There was no response.)

Exhibit 13 is received into evidence.

(Exhibit No. 13 previously marked for identification was received in evidence, this date.)

MR. BLASI: Now, Mr. Dickerson, I would like to have you, in view of the procedure we're following, mark for identification a certified copy of the resolution of the Zoning Board of Appeals of the Town of Somers which was adopted November 21st, 1972.

MR. DICKERSON: Exhibit No. 14 for identification is a resolution of the decision of the Zoning Board of Appeals of the Town of Somers adopted --

MR. BLASI: November 21st, 1972.

MR. DICKERSON: -- November 21st, 1972.

MR. BLASI: Right. I will offer that in evidence, Mr. Examiner.

MR. DICKERSON: Any objection to having this document received into evidence?

MR. FLORENCE: Is that a certified

copy?

MR. BLASI: Certified by the Clerk,

yes, sir.

MR.DICKERSON: Yes, sir. The certification is dated September 12th, 1973. Exhibit
No. 14 is received into evidence.

(The resolution of the decision of the Town of Somers Zoning Board of Appeals was marked for identification and received into evidence as Exhibit No. 14, this date.)

MR.BLASI: I ask that there be marked for identification first a certified copy of the order of the Town Board of the Town of Somers dated May 16th, 1973 and filed in the office of the Clerk of the County of Westchester on June 18th, 1973 establishing the Heritage Hills Water District in the Town of Somers.

MR. DICKERSON: For identification, an order of the Town Board of the Town of Somers, Westchester County, establishing a Heritage Hills Water District dated May 16th, 1973 is marked as Exhibit No. 15.

(The order of the Town Board described above was marked for identification as Exhibit No. 15, this date.)

MR.BLASI: I now offer it in evidence,

Mr. Examiner.

MR. DICKERSON: Any objections to receiving this document in evidence?

(There was no response.)

MR. DICKERSON: Exhibit 15 is received into evidence.

(Exhibit No. 15, previously marked for identification, was received in evidence, this date.)

MR. FLORENCE: Mr. Dickerson, may I reserve the right, rather than interrupting at this point in time, on that Exhibit No. 15, the order of the town?

MR. DICKERSON: I'll receive it at this time for what it's worth and it will be subject to examination later.

MR. FLORENCE: All right, sir.

MR. BLASI: I ask, Mr. Dickerson, that a certified copy of the Certificate of Incorporation of Heritage Hills Water Works Corporation filed in the Office of the Department of State, Division of Corporations, on February 7th, 1973, be marked for identification.

MR. DICKERSON: For identification as

Exhibit No. 16, a certificate of incorporation of the -- of Heritage Hills Water Works Corporation pursuant to Section 3 of the Transportation Corporation Law and filed with the Secretary of State on May 11th, 1973.

(The Certificate of Incorporation described above was marked for identification as Exhibit No. 16, this date.)

MR. BLASI: I would like to offer that in evidence.

MR. DICKERSON: Any objection?

MR. BLASI: And I do so offer it.

MR. FLORENCE: Same reservation if I

might.

MR. DICKERSON: I'll receive Exhibit

16 directly in evidence for what it's worth. These
documents can be examined later.

(Exhibit No. 16, previously marked for identification, was received in evidence, this date.)

MR. BLASI: Mr. Dickerson, you have in your possession a letter from me dated May 18th, 1973 advising you of the formation of the Heritage Hills Water Works Corporation.

MR. DICKERSON: That's Exhibit 7.

MR. BLASI: Yes, I would like to offer that in evidence.

MR. DICKERSON: Any objection?

MR. FLORENCE: I'm sorry that I --

MR. DICKERSON: Exhibit 7.

MR. FLORENCE: What is it?

MR. BLASI: It's a letter notifying the Board of the formation of the Water Works Corporation. No problem.

MR. DICKERSON: No objection, Exhibit 7 is received into evidence.

(Exhibit No. 7, previously marked for identification, was received in evidence, this date.)

MR. BLASI: Now, I have asked that there be marked for identification a certified copy of the order of the Town Board of the Town of Somers establishing the Heritage Hills Sewer District which order is dated May 16th, 1973 and filed in the office of the Clerk of the County of Westchester on June 18th, 1973.

MR.DICKERSON: Thank you.

MR. WALTERS: Mr. Examiner, what was

that form pursuant to, what section of law?

MR. BLASI: Transportation Corporation.

MR. DICKERSON: The provisions of Section 192 of the Town Law, otherwise complying with Article 12 of the Town Law. Let me mark it for identification and hand it down. It would be simpler.

MR. BLASI: Are you talking about the order forming the district or the certificate?

MR. WALTERS: The one he --

MR. BLASI: Oh, he wants to see the certificate, Mr. Examiner.

MR. DICKERSON: Oh, the sewer district?

MR. WALTERS: Yes, the one he has

there.

MR. DICKERSON: For identification,
Exhibit No. 17 is an order establishing the Heritage
Hills Sewer District in the Town of Somers, County
of Westchester, dated May 16th, 1973. Pass that to
Mr. Walters, please.

MR. BLASI: Sure.

(The order establishing the Heritage
Hills Sewer District was marked for identification

as Exhibit No. 17, this date.)

MR. BLASI: Mr. McGann -- I'll ask
that this document be marked first for identification
-- excuse me, I would like to offer that in evidence
also.

MR. FLORENCE: What's that?

MR. BLASI: I offer that in evidence, the order creating the sewer district.

MR. FLORENCE: Let me see it. Excuse me. Is this section -- Section 3 of the Transportation --

MR. BLASI: No, no, no, that's under the Town Law.

MR. FLORENCE: It's also Section 3 of the Transportation Corporation Law, right?

MR. BLASI: That certificate is, that certificate is, the certificate of the water works corporation. No sewer works corporation has been formed as yet. O.K.?

MR. WALTERS: In other words, no sewage water works corporation pursuant to Section 116 of the Transportation Corporation Law has been formed.

MR. BLASI: No sewage corporation has

been formed.

MR.WALTERS: O.K. That's what I wanted the record to be clear on.

MR. FLORENCE: You got a district but no corporation.

MR. BLASI: That is right.

MR. FLORENCE: No objection.

MR. BLASI: No, is that marked in evidence? I offer it in evidence.

MR. DICKERSON: Any objection to receiving Exhibit 17, the order establishing the sewer district?

MR. FLORENCE: I think we missed a number or I missed a number. That might be 18, Mr. Examiner.

MR. DICKERSON: No, sir.

MR. FLORENCE: 17 was the letter ad-

vising the DEC --

MR. DICKERSON: This is 17. No. 7 is the letter of Mr. Blasi.

MR. BLASI: That was already in the

file.

MR. DICKERSON: If there is no

objection, I'll receive Exhibit No. 17 into evidence for what it's worth.

(Exhibit No. 17, previously marked for identification, was received in evidence, this date.)

MR.BLASI: Now, I ask that there be marked for identification a certified copy of the building loan contract between H & H Land Corporation and Marine Midland Bank Western dated April 18th, 1973 filed in the office of the Clerk of the County of Westchester on April 19th, 1973.

MR. VAZZANA: Could we see that?

MR. FLORE E: Purporting to do what?

MR. DICKERSON: Let me mark it.

MR. VAZZANA: Building loan contract.

MR. DICKERSON: Exhibit No. 18 for

identification is entitled "A Building Loan Contract" and reading from the heading, "By this agreement dated April 18th, 1973 between H & H Land Corporation, a New York Corporation, and Marine Midland Bank Western, a New York Corporation."

(The Building Loan Contract Agreement described above was marked for identification as Exhibit No. 18, this date.)

MR. FLORENCE: I'm going to object to it as irrelevant.

MR. DICKERSON: Why don't you take a look at it?

MR. BLASI: I haven't offered it yet.

MR. FLORENCE: I know.

MR. DICKERSON: It's just been marked for identification. The purpose for marking these with one common set of numbers is we can all call them by the same name at least in public.

MR. FLORENCE: Well, it's improper for me to examine it anyway until it's offered in evidence anyway.

MR. BLASI: I have no objection. If you want to look at it, look at it.

MR.DICKERSON: Shall we take about a two-minute break while you look at it and we can relax?

(Whereupon, a short recess was taken.)
MR. DICKERSON: Ladies and gentlemen.
O.K., Mr. Blasi.

### BY MR. BLASI:

Q. Mr. McGann, I show you Applicant's Exhibit 18 and ask you if this is the certified copy of the building loan contract between H and H Land Corp. and Marine-Midland Bank Western Corporation relating to the financing of Heritage Hills of Westchester, the development which is the subject of this application? Please look at it.

A. Yes, it is.

MR. BLASI: I offer it in evidence, Mr.

Examiner.

MR. FLORENCE: I object. May I in-

quire, Your Honor?

MR. BLASI: Do you want a voir dire?

MR. DICKERSON: Please state your objec-

tion.

MR. FLORENCE: Yes, sir. I am William Florence and I represent one of the objectants, Sun Enterprises, Ltd., and I'm asking on the voir dire.

# PRELIMINARY EXAMINATION BY MR. FLORENCE:

Q. Mr. McGann, do you make any representations or promises to the State of New York or any of its municipal subdivisions in this writing, referring to this Exhibit 18 that's been offered for evidence?

A. I do not.

- Q. Does the State of New York -A. Except that it is an outstanding financing.
- Q. All right. Are there any signatories of the State of New York or any of its subdivisions to this writing?
  - A. Not to my knowledge.

MR. BLASI: Are you finished?

MR. FLORENCE: No.

Q. Have you made any promises in this writing or dependent upon this writing to any of the subdivisions of the State of New York?

A. To the extent I represented that this financing is outstanding in relation to this project, I have.

MR. BLASI: May I say, Mr. --

MR. FLORENCE: I am going to object.

MR. BLASI: -- that I object to that question because the document speaks for itself.

Right on the front page on the face of it, it refers to the project being developed in phases pursuant to land general use and development plan for

Heritage Hills dated June '72 as revised July 1972 subject to compliance by the borrower with the modifications and conditions contained in the November 21st, 1972 approval of the plan by the Zoning Board of Appeals of the Town of Somers, New York.

MR. FLORENCE: I submit, Your Honor, that the references in the mortgage are not the best evidence of those limits and conditions but rather are the limits and conditions set forth by the subdivisions of the State of New York and, therefore, I continue to object.

MR. BLASI: May I explain, Your Honor, for the purpose of the record, the purpose -- excuse me, Mr. Examiner, I'd like to call you "Your Honor."

MR. FLORENCE: It's easier.

MR. DICKERSON: I couldn't wear my hat if you did.

MR. BLASI: May I explain, the purpose of this document is in connection with one of the criteria which the State has set forth as to the financial status of the applicant. Now, this building loan contract is an undertaking by the

Marine-Midland Bank Western to supply to these developers a loan in the amount of \$18,500,000.

MR. FLORENCE: Five hundred thousand.

MR. BLASI: Five hundred thousand dollars, \$18½ million, in support of this project. It is evidence of financial status or the financial position of these applicants. I don't want to argue the point, but whenever any national bank undertakes to advance 18½ million, I think it's relevant and I think the state would be interested to know that.

MR. FLORENCE: I submit that it's irrelevant. The best evidence of the status, the financial
status, if that's sought to be proved, is a statement
about the corporation, period, not anybody's contingent obligation for whatever reasons, profit or
otherwise.

MR. BLASI: Your objection has been noted --

MR. DICKERSON: Mr. Florence, you will have plenty of opportunity to go into this in exquisite detail. I'm going to overrule your objection and receive this document for what it's worth.

MR. FLORENCE: I respectfully except
to the introduction of a building loan between a
banking corporation and a particular corporation -I think it's Heritage Hills.

MR. DICKERSON: You heard my comment:

For what it's worth. Your exception is noted. Thank
you.

(Exhibit Number 18 previously marked for identification, was received in evidence, this date.)

MR. BLASI: Now, I ask, Mr. Examiner, that this paper be marked for identification, if I may. It's a certificate of insurance.

MR. DICKERSON: Exhibit Number 19 for identification is a certificate of insurance if I can use the short title, the Hartford Insurance Group, dealing with the comprehensive business policy Number 16 CBP 700133 for the Heritage Development Group, H and H Land Corporation, HDG Company -- I believe a misprint, it reads 'Reritage Hills of Westchester."

MR. BLASI: It should be "Heritage."

MR. DICKERSON: Henry Paparazzo, Curtis

McGann, Heritage Water Works Corporation.

MR. BLASI: Right. I may point out that all of the applicants and anyone connected with this are covered in the certificate.

(The above-described document was marked for identification as Exhibit Number 19, this date.)

MR. BLASI: Now, Mr. McGann --

MR. FLORENCE: Is that for identifica-

tion?

MR. DICKERSON: For identification at this time. That would be 19.

MR. BLASI: Yes, at the moment.

MR. DICKERSON: Yes, the certificate is dated the 13th of September, 1973.

DIRECT EXAMINATION
BY MR. BLASI: (Continued)

Q. I ask you, Mr. McGann, is this a certificate that
was issued to the named insureds, at the request
of these applicants, so as to cover the risks as
set forth in that certificate which includes a
comprehensive business policy, and also I call your
attention -- what is the other coverage on the left,

water works --

A. The water works company, 752041573.

Q. And that covers the work to be done. Is that correct?

A. Yes, it does, I believe.

MR. BLASI: I offer the certificate in evidence.

MR. DICKERSON: Any objection?

MR. FLORENCE: In favor of whom is that insurance? That is, who is the insured --

MR. BLASI: It's a full comprehensive policy and it can not be cancelled, amended or otherwise altered without the notice given to the Department of Environmental Conservation of the State of New York. It covers everybody, general comprehensive --

MR. DICKERSON: It appears to provide liability coverage.

MR. BLASI: It's insurance for any damages --

MR. FLORENCE: Are you talking about liability insurance?

MR. BLASI: Full liability insurance.

MR. FLORENCE: What are the limits?

MR. BLASI: The limits are in there.

It's \$1 million for personal injury and \$100,000 for property damage.

MR. FLORENCE: I have no objection.

MR. DICKERSON: Exhibit 19 is received.

(Exhibit Number 19 previously marked for identification was received in evidence, this date.)

MR. BLASI: I suppose, Mr. Examiner,
Mr. McGann is available for any questioning by you
or by anybody else.

MR. DICKERSON: I'd like to reserve my questions until last if I have any.

Ladies and gentlemen, at this time, Mr. McGann is open to cross-examination. I think I'll start down the list of the various parties and you will each have an opportunity to question Mr. McGann about the matters that he has set forth. I would ask only one thing in the interest of proceeding with the hearing: If you feel it's necessary do so, but I would ask you not to repeat the same questions by each party. If a matter has been covered to your

satisfaction, there's no real purpose for going over it again. If you're not satisfied, then please press on with your questions.

Mr. Vazzana, do you have any questions?
MR. VAZZANA: Yes, I have.

## CROSS-EXAMINATION BY MR. VAZZANA:

- Q. Mr. McGann, you said that this was a condominium type development; is that right?

  A. Yes, sir.
- Q. How many units do you intend to construct?

  A. 3100 approximately.
- Q. Upon how large an area?

  A. 836 acres.
- Q. Have you filed with the Attorney-General's Office?

  A. We are in the process of doing so. We have not completed our filing.
- Q. So at this moment there is nothing before the Attorney-General, is that right, for his approval?
  A. There is not. That's correct.
- Q. You're aware, are you not, that before you may construct anyunits, the approval of the Attorney-General is required?
  - A. That is not correct, sir. Before we may solicit

oradvertise in the State of New York, we must file.

- Q. You intend to -A. Oh, yes.
- Q. All right. But eventually, of course, you have to file with the Attorney-General, is that correct?
  A. Absolutely, yes.
- Q. Do you know the provisions upon which you must file with the Attorney-General?
  A. We have special counsel in New York City who we've

engaged over the past six or seven years who's handled our filings, and he is in depth familiar with the particulars of the state law requiring various details and procedures for the filing. I do not handle that myself directly.

Q. Now, there will be 3100 units, approximately, thereabouts; is that right?

A. Yes, sir.

- Q. What type of construction will they be?

  A. They will be wood frame construction. I don't know that I fully understand the direction of your question and I'd like to be responsive to it.
- Q. Yes. What type of home -- you are going to put up homes; is that right?

- A. Yes, sir.
- Q. A two-family home?

A. No, they will be in small module buildings, containing between two and six units.

- Q. Two and six units? Are these units going to be owned separately?
  - A. They will be structured under the Condominium

    Act, and they will be owned as individual condominium units.
- Q. And the common elements will be owned by those who purchase the particular ---
  - A. Each condominium unit owner will own an undivided fractional interest in the common elements, and limited common elements.
- Q. And those common elements include the walls, is that right?

A. They do.

- Q. Include the ground area?
  - A. Pardon?
- Q. Does it include the ground area?
   A. It includes the ground area within the condominium.
- Q. How about the parks, recreational areas?

- A. It would include the parks. This is a multiple condominium structuring similar to Heritage Village, and there are complex nuances beyond that, but essentially there would be common ownership by the unit owners of all of the common elements, recreation facilities, with the exception of the golf course, sewer and water utilities.
- Q. Now, with the golf course, what's going to happen to the golf course?
  - A. That will be retained by the developer.
- Q. So, in other words, what you've got here is the units upon which the land will be owned by the individuals who are the purchasers of the particular structures; is that right?

  A. Yes, sir.
- Q. And the golf course will be owned by a separate corporation?
  - A. It will be owned by Heritage Hills of Westchester.
- Q. Heritage Hills of Westchester. Now, the sewage disposal unit, will that be part of the common elements?

  A. No. it will not, sir.
- Q. So what we have now are the common units, the common

THOMAS P FOLE

elements owned by one particular individual; is
that right, or corporation separate and apart from
the mage and water facilities? Is that right?

A. Not really, sir. Essentially, it is correct.

There will probably be as many as 25 separate concominiums tied together in structure under a master
association for management purposes and the like.

- Q. Now, who is going to retain the ownership of the sewage and water facilities?A. The water works company and the sewerage compan
  - ies will retain the ownership of those -- of the assets of those corporations.
- Q. Has the corporation been formed or will it be formed A. Yes.
- Q. -- for that particular purpose?

  A. It shall be.
- Q. Now, will there -- will Mr. Paparazzo and the other individuals who are involved in this -- will they retain any control whatever in the sewage and water facilities?
  - A. They will be responsible for the management and operation.
- Q. I didn't ask that question. I said will they retain

- A. I don't know what you mean by "retain control."
- Q. Or ownership.

  A. They will retain ownership. Is that w

A. They will retain ownership. Is that what you mean?

- Q. That is correct.
  - A. Thank you. Yes. They will retain ownership.
- Q. They will retain ownership?
  - A. Yes.
- Q. And they will be charging the individuals or the individual owners, unit owners; is that correct?
  A. That's correct.
- Q. For the water, is that right?
  - A. Yes, sir.
- Q. Now, you said that initially the water treatment plant will be constructed by the present owners; is that right?

A. That's correct, sir.

- Q. And the treatment plant will also be constructed by the present owners?
  - A. Yes, sir.
- Q. But that will be done under a corporation, is that right?
  - A. Either directly or through a corporation; that's

correct , sir.

- Q. Have you filed with the Secretary of State a certificate of incorporation?
  - A. Just the water works corporation.
- Q. Just the water works corporation.
  A. At this point.
- Q. Have you filed under Article X of the Transportation Corporation Act relating to the water?

  A. I believe Mr. Blasi can give a better answer to that question than I as he's handling these matters for us from the standpoint of filing and has indepth familiarity with the details of those filings.
- Q. Now, what is the name of these corporations that you speak of who will be operating the sewage disposal unit and the water?
  - A. It will be Heritage Hills Water Works Corporation and Heritage Hills Sewer Works Corporation.
- Q. Do you have a financial report?

  A. Essentially the ownership of both of those corporations is the same as the ownership of the project in general at this point.
- Q. Do you have a financial report of the corporations?A. I do not.

- Q. Do you know who has that financial report?
  A. I do not. I do not believe it has been put together, because I don't believe the corporations have yet been funded.
- Q. So, in other words, there are no assets?

  A. I'm not saying there are no assets. There are no assets at this point in those corporations. There will be whatever assets are required to provide the construction and the services.
- Q. In other words, it's purely in the formative stage at the moment; is that correct?
  - A. That's right, sir.

MR. BLASI: It has to be.

MR. VAZZANA: I'm not asking whether it

has to be. It's in the formative --

MR. BLASI: I'm sorry. I withdraw the interjection. I apologize to counsel.

### BY MR. VAZZANA:

- Q. Now, this building lcan application which you have, this building loan with the Midland-Marine, is it?

  A. Yes, sir.
- Q. That's for 18 million --

MR. BLASI: 18%.

- Q. 18½ million?

  A. Yes, sir.
- Q. Does that include the construction of the sewage and disposal unit?

  A. Yes, sir, it does.
- Q. May I have that exhibit?A. I believe it's generally stated in Paragraph 1(a).
- Q. This project is a -- you have filed no declaration, is that right? There is no declaration yet?
  A. Not as yet.
- Q. None has been filed with the County Clerk's Office -A. No, sir.
- Q. -- in Westchester County? So for all intents and purposes, can I say this, that there is no condominium?
  - A. That is correct, at this point.
- Q. At this point there is no condominium. It's merely a proposal; is that right?
  - A. It's more than a proposal. It is the intention of the developer to structure this under the Condominium Act and before any units are sold, it will be formed as a condominium, that section which is --
- Q. All right. Now, when these corporations -- I'm

taking both sewage as well as the water corporation
-- what control will the petitioner still have in
those facilities?

A. If you mean again -- by "control" do you mean ownership?

- Q. Use 'bontrol" any way you wish.
  - A. Well, it's a generic term that has such a broad meaning, I don't know how to answer the question, and I want --
- Q. Will it be left to the condominium unit owners to operate?

A. It will not.

- Q. Will it?
  - A. No. I stated that before.
- Q. Now, who is going to operate that again?
  A. It will be operated by the water works corporation and sewer works corporation respectively.
- Q. And that corporation, I assume, will be composed of the unit owners?
  - A. No, I have answered that before that it will not.
- Q. So, in other words, you've got a separate unit?

  A. Yes, sir.

- Q. Now, what is this H and H Land Corporation?
  A. It was a corporation formed for the purpose of being a mortgagor. It was required by our lending institutions in the State of New York.
- Q. Now, has the water works corporation been formed under the Transportation Act?

A. I believe it has been formed.

MR. BLASI: Would you permit me to answer that, counsellor?

MR. VAZZANA: Yes, please.

MR. BLASI: The water works corpora-

portation Corporation Act with the consent of the Town Board and with the permission of the Department of Health. Under the water works corporation — that is, the control of the operation of the water works corporation is under the aegis of the Public Service Commission, with — which is the reason, as I understand it, why part of this application went to Public Service. The sewage works can not be formed until the approvals under Article X which have been referred to by — I believe what counsellor meant here — until the approvals are

al! given relating to the system under the provisions of the Transportation Corporation Law. The service of the sewage is under the aegis and jurisdiction of the Town Board, and you must read the sections of the Transportation Corporation Law together with Section 189 of the Town Law which directs the water works corporation to make contracts for the service to the individual condominium units subject to the approval of the Town Board, and those contracts can not be for more than five to ten years and there are all kinds of controls in there relating -- we haven't yet gotten to any of the construction yet or any of the structuring of these companies because no plans can be -- no final plans can be put together until we get through this preliminary step which is an approval of the water upply, and what has been brought in by the Department of Environmental Conservation in connection with that water supply hearing are the factors of the sewage and the other items that Mr. Dickerson read.

MR. VAZZANA: So the sewage disposal corporation has not yet been formed?

MR. BLASI: No, and it can not be formed.

MR. VAZZANA: And it can not be formed.

MR. BLASI: Until we get the approval of all you gentlemen.

MR. VAZZANA: Until you get the approval for all the --

MR. BLASI: .- different authorities.

MR. VAZZANA: -- the authorities con-

cerned; is that right?

MR. BLASI: May I say one more thing, counsellor?

MR. VAZZANA: Sure.

MR. BLASI: It's responsive to this.

The jurisdiction naturally of water and sewage is under your different authorities and the Zoning Board of Appeals recognized it when they adopted the resolution. The validity of the special exception permit for this development is conditioned upon obtaining the following approvals by agencies outside of the Town of Somers:

(a) water supply system by the New
York State Department of Environmental Conservation
and the New York State Department of Health and
any other governmental agency having jurisdiction;

- (b) Sewage treatment and disposal system by the Westchester County Department of Health and the City of New York Environmental Protection Administration and any other governmental agency having jurisdiction;
- (c) I pact on classified streams, by the New York State Department of Environmental Conservation; and
- (d) Road intersection with state highways by the New York State Department of Transportation.

Now, we formed the water works corporation as I mentioned in my opening statement. We had the consent from the Department of Health, so we have the corporation in being but until we can proceed with the actual consent, we're in the formative stages.

MR. VAZZANA: So at this point, you have not filed an application for -- under the sewage, to the City of New York or to the West-chester County?

MR. BLASI: Oh, yes, yes. We have had a waste water report filed. An application has been made and there have been studies which Mr. McPhee will testify to but until we get through all of those studies and until we get through all those collateral approvals which are in addition to DEC, we cannot go forward with the sewage work.

MR. VAZZANA: In other words, you have not received their approval?

MR. BLASI: No, sir, not yet.

#### BY MR. VAZZANA:

- Q. Tell me, what are the common facilities or common elements, and I'm speaking about common elements, will there be on the site?
  - A. You talking about the project in general?
- Q. Project in toto.
  - A. Common elements, and I am once again not getting technical in the sense of defining some of these as common elements, they will be in common ownership

of unit owners and in that broad sense, I will proceed. I think it's fair to say that everything except the sewer works corporation, water works corporation and the golf course will be under the ownership of one form or another and control of one form or another of unit owners. They will include extensive recreation and activities facilities, men's, women's clubs, swimming pools, tennis courts, paddle tennis courts, recreation activities rooms, gymnasium facilities, auditorium, and a number of other amenities of this nature that will be owned by the unit owners in common.

- Q. But getting back to these corporations, at the moment you're speaking about funding, you're in the process of funding these corporations and as yet you have no financial statement or no financial statements?
  - A. The corporations have not been yet funded and a financial statement has not been prepared to my knowledge.
- Q. Now, who is going to fund these corporations?A. Heritage Hills of Westchester.
- Q. Now, Heritage Hills of Westchester who is not the

applicant here, is that right?

- A. Henry Paparazzo and Curtis McGann doing business as a partnership, Heritage Hills of Westchester.
- Q. And they will fund the corporation?A. Yes, sir.
- Q. Do you know how much monies will go into the funding of these corporations?
  - A. I do not, sir.
- Q. Have you any approximate idea as to how much monies will go into these corporations?
  - A. I do not know exactly how the funding will take place. There will be sufficient monies supplied, however, either through the vehicle of the corporation or under the partnership developer to construct and operate these systems. I don't know beyond that the details that will be involved.
- Q. Now, when these units are constructed -- I'm speaking about the units are constructed and are sold, the control of these units will revert to the particular purchaser, is that right?
  - A. The condominium unit owners. --
- Q. That is correct.
  - A. -- will own and control their destinies.

MR. FLORENCE: Let the witness answer, Mr. Blasi. He can answer that.

MR. BLASI: I didn't say a word, sir.

I think it was somebody behind me. I didn't say a
word, believe me.

MR. VAZZANA: Well, a lot of people behind you.

MR. FLORENCE: You'll get in trouble.

THE WITNESS: If I may relate this project to Heritage Village project, because we're structuring it almost identically, Heritage Village consists now of approximately 21 separate condominiums. It has extensive activities and recreation facilities. It also has a sewer and water operation. It also has a 26-hole golf course. Each condominium is initially controlled by the developer until the project comes to some degree of maturity. There are limitations on that developer control as to term, et cetera. In Heritage Village, for instance, at the present time I believe 18 of these condominiums have been turned over to unit ownership control and are totally controlled and operated, managed by unit owners through their master association which is in

THOMAS

existence, has nothing to do with the developer at all. It is our intention, it always has been our philosophy, to turn control over to unit owners just as soon as a disciplined and an effective organization for the management and operation of the condominiums can be developed and this is what we have done inthe past and this is what we intend to do in Heritage Hills.

- Q. Now, these 18 units that you speak of -A. Right.
- Q. -- which have already been turned over to ownership, is that right?
  - A. That's correct, sir.
- Q. Now, have these 18 units been turned over to any of the petitioners here?
  - A. Turned over, I'm talking about condominiums.

    I'm talking about --
- Q. I'm talking about condominiums, condominium units.

  A. I'm talking about many, many hundred of residential units.
- Q. I know you are.
  - A. Have they what?
- Q. Do any of the petitioners here have any interest in

A. Very limited. There might be one or there might be five or ten condominium units of the many hundreds that are owned by the Heritage Village Joint Venture. To that extent yes, there might be an interest only as a unit owner, however.

- Q. Would it be fair to say that when these units, common elements -- and when I speak of units I'm speaking of common elements, I'm not speaking about a space, I'm speaking about the physical building itself plus also the common elements which also I'm referring to as the land, I'm disregarding the other facilities -- once those are sold, the petitioners no longer have any control insofar as those units are concerned with the exception, of course, what may be in that declaration so far as age qualifications, am I correct?
  - A. Essentially that's correct.
- Q. When you say "essentially," that is correct, isn't it?
  - A. It is correct. It is basically correct.
- Q. I mean you are a lawyer. You are a lawyer.
  - A. Well, I mean the question is so broad that only

God can answer it.

- Q. You're familiar --
  - A. There are so many elements.
- Q. You're familiar with the Real Property Act, are you not?
  - A. I'm familiar with the Connecticut Unit Ownership Act, yes.
- Q. Are you familiar with the New York State Real Property Act?
  - A. I am familiar with it not in as great a detail.
- Q. Do you know that under the laws of the State of New York --
  - A. If I may --
- Q. -- if every --
  - A. One of the things, if I may interrupt you, the reason I wanted to qualify because there is some -- some control maintained for a period of time by the developer, management control of the condominium association.
- Q. Well, that's management control?

  A. Yes.
- Q. In that --
  - A. If you're thinking in terms of ground leases

and this sort of thing, no.

- Q. Naturally you would have some management control?

  A. Yes.
- Q. Or some management and operation of the unit?A. Yes, correct.
- Q. Which, of course, would be separate and apart from anything you would do with a condominium in and of itself?

A. We sell the fee to the common area.

Q. That is right, you sell the fee.

A. Right.

Q. And then after you sell the fee and the fee is sold, the petitioners are out of it?

A. Correct.

MR. VAZZANA: That's all.

THE WITNESS: Out of ownership.

MR. VAZZANA: That's all. May I say

this: May I reserve my right to raise any questions later on with this witness?

MR. DICKERSON: Mr. Weber, any ques-

tions of this witness?

MR. WEBER: Not at this time.

MR. DICKERSON: Mr. Florence?

MR. FLORENCE: Let me say at the outset,
Mr. McGann, I'm not here because I don't wish the
success of the condominium development but I have
some specific questions on behalf of one of my
clients who is vitally interested in one aspect of
this.

# CROSS-EXAMINATION BY MR. FLORENCE:

- Q. As I understand the thrust of the previous crossexamination, we don't really know who this water
  works is or is going to be at some future time except
  as you say it, is that correct?

  A. That is correct.
- Q. And in point of fact, as of this moment, the geographical limitations of that building loan are the
  same dimensions as the designed residential development application, isn't that also correct? In
  other words, the loan, the building loan, takes in
  the DRD?
  - A. The building loan does take in the DRD.
- Q. All right. However, isn't it also true that the water works is outside the geographical confines of the DRD?

- A. The building loan also takes into account 917 acres which includes the land upon which the wells and which we're discussing are located.
- Q. In any event, the application before the Town of Somers, the Zoning Board of Appeals, does not include that area where you intend to get your supply of water presently?

A. I'm sorry, I didn't -- I didn't hear that.

Q. I'll repeat.

A. Or I lost track of the train.

Q. In any event, the application before the Zoning
Board of Appeals for the DRD, if I may use that
expression --

A. Yes.

Q. -- includes that area where you intend to get the water?

MR. FLORENCE: Let him answer it,
Peter.

MR. BLASI: All right.

A. Well, the wells that will supply water to the system are not within the DRD. They are within the property owned in fee by the partnership.

Q. All right. Now, there are several corporations and

- a partnership involved have, are there not, all with varying interests?
- A. No, they're all equivalent interests.
- Q. All of equal interest?

  A. Yes.
- Q. And who is the applicant here?A. Henry Paparazzo and myself.
- Q. Well, you're not going to be the people who operate the water works and the sewage disposal unit, are you?
  - A. If there's a corporation formed, the corporation would be owned in the same relationship.
- Q. We would depend on your word for that?

  MR. DICKERSON: Under oath.
  - A. To the extent that I can answer the question at
- Q. Now, in relation to that, assuming -- you mentioned the diety before. Assuming that he makes a choice between you and he chooses in favor of Mr. Paparazzo, then, of course, there would be a change in the ownership, would there not?
  - A. Of course.

this point in time.

Q. What protection does the Tov of Somers or do the

individuals for the Town of Somers have in this corporation to be formed, what financial protection?

A. Well, the systems must, first of all, be bonded.

- Q. You haven't bonded them at this time, have you?

  A. No, they haven't been bonded at this time but a building permit cannot be obtained until bonding, satisfactory bonding, has been accomplished and this will be done.
- Q. But in addition to that --
  - A. This would also provide for the -- I believe, if mymemory and my understanding is correct, there has to be bonded operation of the system for a period of at least five years.
- Q. M-m h-m-m, and that bonding is going to be for the purpose of assuring the Town that the company, the works are constructed and completed, isn't that correct? When you're talking about bonding, you're talking about finishing the plant, aren't you?

  A. Correct, and operating it.
- Q. Right, and operating it. But what protection is there there for people who might be downstream owners should a flooding occur or should the plant have a breakdown and there be raw sewage?

- A. Well if that were the case and it were due to the negligence of the operation, then they would be protected among other things by insurance coverage.
- Q. Up to one-half a million dollars?
  - A. I don't believe it's one-half a million dollars.

    I don't know what the coverage is, but I think it's

    a hundred thousand on property damage and a million

    dollars -- a million dollars on --
- Q. \$100,000?
  - A. Pardon?
- Q. \$100,000?
  - A. And a million on personal injury.
- Q. All right, I misunderstood. I thought it was a million and a half-million but if it's \$100,000 on property damage, then to whom does the aggrieved party go for such amounts as are not covered by your insurer?
  - A. First, they would have the protection of the assets of the development itself, as much of the development that had not been sold.
- Q. In point of --
  - A. They would have recourse against general assets of the --

- Q. In point of fact, if it were a separate corporation which had funds or no funds depending on what you decide to do in the future, they would be limited, isn't that correct?
  - A. Well, I think they would -- yes, they would be limited, that is correct.
- Q. And isn't that the purpose of the corporation, to limit your responsibilities?
  - A. No, it is not the purpose -- it is not the purpose of the corporation. The purpose of the -- and we made very great efforts to avoid any corporate form of ownership here.
- Q. But there are about four corporations?
  A. Correct, all of them required and beyond our control and not desirable as far as we are concerned.
  It probably is desirable from other aspects.
- Q. Well, let me ask you in this respect: Certainly an individual can do all the steps that you are doing by a corporate entity, isn't that correct?
  A. Yes.
- Q. So now when you say to me that you're trying not to have corporations, you don't refer to that in terms of the protection of the citizens of Somers but

rather taking into consideration certain income tax considerations?

A. Yes.

Q. Capital formation for the purpose of the furtherance of whatever your capital purposes would be within this structure intending to continue to work at this enterprise?

A. Correct.

Q. Now, in fact, the application that was approved by the Zoning Board of Appeals back in the spring of this year, was it? --

A. Yes.

Q. -- indicated that they gave approval of the map as it then existed, the plan as it then existed, is that correct?

A. It was a conditional approval. The conditions were set forth in the special exception use permit.

Q. And --

A. Which made reference to that plant and set forth--

Q. Among those -- and that was really a preliminary decision on the part of the Zoning Board of Appeals, was it not, as to concept?

MR.BLASI: It speaks for itself. I

object to that question. The statute is clear.

It's a matter of law.

MR. FLORENCE: May I inquire further?

Q. In fact, youhave changed certain provisions that you have made application for, have you not? For example --

A. In what respect?

For example, you changed the type of proposed sewage Q. treatment plant from the type that you told the ZBA you were going to use; you changed the location of the plant, you diverted a stream, all of those were changes from your application, were they not? A. I don't believe so. I believe that we represented to the Town that we would put in an advanced sewage treatment plant. We were talking in a very preliminary stage about a biodisc system at that point. Now, I'm a lawyer and not an engineer and I don't know that I fully understand these systems at all. I can probably accurately represent I don't understand them but subsequently the City of New York characterized the biodisc system or type of system as experimental which necessitated us to go to the extended aeration type of system. This was

not a change as far as the Zoning Board of Appeals was concerned. The Zoning Board of Appeals has no jurisdiction. A a matter of fact, the state agencies that Mr. Blasi referenced all have the jurisdiction over the type of treatment. The Zoning Board of Appeals concern was simply that an advanced sewerage system was proposed which would protect the interest of the community and service the population of the project.

- Q. Is that all by way of saying that you've changed your minds as to the type of sewage disposal plant you had intended and you discussed with the Zoning Board of Appeals?
  - A. Effectively I'm saying that the City of New York directed us by virtue of their characterization of the biodisc type of treatment as experimental to go to a much safer and much more proven type of treatment which we're doing.
- Q. So the answer is yes?A. The answer is yes.
- Q. All right. Now, with respect to the section of the zoning ordinance which we refer to as Section 72.02, essentially you and your representatives provided

this form of zoning modification for the Town of Somers, did you not?

MR. BLASI: I object to that.

A. No.

Q. You didn't?

A. No.

- Q. The Town of Somers accepted your recommendation that this is a type of zoning for modification of their then existing system of zoning?

  A. Who is the Town of Somers? First of all we reviewed --
- Q. They enacted this law, the Town Board.

  A. We reviewed --
- Q. The Town Board of the Town of Somers.
  - A. We reviewed the approach to this type of zoning and apparently the Town of Somers didn't like our approach.

MR. BLASI: Mr. Examiner, I've let this questioning go by without objection but you have before you the ordinance and you have the resolution. These are actions in accordance with the provisions of the Town Law taken by a duly constituted body.

Now, he's going into the background and the history

of the motives of it. I don't think it's relevant to anything that you've had a notice of hearing for.

MR. FLORENCE: I have no intention to probe the motives of this at all.

MR. BLASI: Well, you're getting into the question --

MR. FLORENCE: I'm just going into his familiarity with the Zoning Board.

MR. BLASI: Well, what difference does it make if he's familiar or not familiar?

MR. FLORENCE: He holds himself out as such.

MR. BLASI: No, he's one of the principals. He happens to be a Connecticut lawyer.

MR. FLORENCE: We won't hold that against him.

MR. BLASI: No, he's an eminent member of the Connecticut Bar, but I thik you're going far afield. I don't see any relevancy to this questioning before -- before this Commissioner.

MR. DICKERSON: I'll sustain your objection.

Q. You are familiar, are you not, Mr. McGann, with the provisions of the designed residential development as it's been enacted by the Town of Somers, aren't you?

A. Generally speaking.

Q. All right. And with respect to its purposes, that
the preservation of bodies of water, wetlands, major stands of trees, nutstanding natural topography,
significant geological features and other areas of
scenic and ecologic value and prevention of soil
erosion is one of the purposes of the enactment of
the designed residential development, a portion of
the ordinance?

A. It sounds familiar, yes.

Q. And, in fact, since the hearing, isn't it true you have changed, for example, the stream location or proposed a change to the stream location where that stream is located on your property?

A. I believe that's correct.

Q. Now, that wasn't part of the original application, was it, when you went before the Zoning Board of Appeals?

A. I don't believe that had anything to do with the

- application before the Zoning Board of Appeals.
- Q. Well, didn't the Zoning Board of Appeals ask you for the concept of the development of this land?
  A. I believe they did.
- Q. And did you tell them that your concept was to divert it in a pipe and dump it on the south side of Route 202?

MR. BLASI: Mr. Examiner, I have to pose the same objection. The resolution speaks for itself. The map speaks for itself. These are matters which have been delegated to the Department ofEnvironmental Conservation as to any change. There was an overall concept and I wish to point out one other thing, Mr. Dickerson. Each one of these section goes before the Planning Board, goes before the Town Engineer and goes before the -- all of the local authorities the way that statute is written. Now, we're here on a water application. We're here on a sewer application and the change of a stream to get your permission. This is what we're here for, not what the Zoning Board does or not what anybody else does. If he has a complaint to make to the Zoning Board of Appeals, let him file it

with the Zoning Board of Appeals where it belongs.

MR. FLORENCE: I don't have any com-

MR. DICKERSON: Objection sustained.

MR. BLASI: Well, then, what's the

point?

plaint.

#### BY MR. FLORENCE:

- Q. Since your application with the Zoning Board of Appeals, have you changed your intention as to the use of the stream that's known as the Brown Brook?

  A. Not to my knowledge. I don't know. There probably have been changes or modifications by engineers when they get into the specifics and details, but I am not familiar with those changes, and I would not in the normal course be familiar with them.

  Mr. McPhee and Mr. Bibbo and others here would give you very specific detail on that.
- Q. Well, let me ask you then, back to the sewage, would this corporation be able to take sewage from, say, an adjoining subdivision or other parcel if you changed the subdivision area so that you could, in fact, for profit treat sewage from other areas than

the Heritage Hills as it's encompassed in the 836 acres?

MR. BLASI: I object to that question because if he wants to ask the engineer as a matter of capacity, he can ask the engineers.

MR. FLORENCE: I am talking legally.

MR. BLASI: As a matter of law, Mr. Florence, you are familiar with the provisions of the Town Law and specifically those relating to the operation of sewer districts. I introduced into evidence an order which created a sewer district. All of those things are under control of the Town Board and not Mr. McGann. There is supposed to be nothing he can do about it. We are here to get the preliminary approval from the Department of Envirommental Conservation as to specific things and we cannot move until we get those approvals. We can not change these plans until we get those approvals, so it's as simple as that. I mean, if there's been an insinuation that we're going around and doing all of these things, that's something else again. We're here to comply. We are here to meet the standards or to exceed them. Now, this is what we're

here for and I would like -- Mr. Chairman, I must at this point interrupt and I want to make a statement on the record --

MR. FLORENCE: You just did.

MR. BLASI: -- because this is an administrative body, and matters of law -- it's ridiculous to ask a Connecticut attorney matters of New York law that I can refer Mr. Florence to 119 of the Transportation Corporation Law which is one of the preliminaries or formal objections, call it what you will, by the City of New York, which points specifically to the guarantees and I refer you, Mr. Commissioner, or Mr. Hearing Officer, to Section 119 which relates to the guarantees that are required by a local governing body with respect to a sewage works corporation.

MR. DICKERSON: I will take judicial notice of Section 119 of the Transportation Corporation Law.

MR. BLASI: And I also ask that you take judicial notice of the other provisions of the Transportation Corporation Law and also to the provisions of Article 12 of the Town Law, specifically

Sections 191, 191(a) and 192. I call also your attention to Article XI of the Public Health Law.

There isn't anything we can do without cooperating with Mr. Weber, with the gentlemen in Albany in the Department of Health, with the Department of Environmental Conservation. Mr. Dineen came in from the County, and these gentlemen are here from the City of New York and there have been meetings with the engineers. You are going to get testimony as to that, testimony as to what has been done. We haven't drawn one line of a permanent plan yet. This comes later.

Now, with reference to these corporations, I mentioned in my opening -- and I have to refer to these matters as matters of law -- Mr.

Weber requested us to form a water district, looking forward to the long range. The only way that you could supply water is to have a water works corporation where you are going to sell the water to these different people. The only way to do it is to form a sewerage works corporation where the town has told you that it does not want to assume that

function.

Now, as far as the funding is concerned, that funding will come later. You have asked for the financial responsibility. We have shown you this building loan agreement, not that we wanted to spill our personal guts here, but to show you what the financing on that part of it is.

We're showing you the expertise of these people and we've also tried to explain that we can not form the sewerage works corporation until these gentlemen give these consents. We can't go forward. Your only interest is in the questions and the issues which are in the law of the Environmental Conservation. The issues are defined and there was an amendment to Chapter 157, the Laws of 1973, which enlarged it a little bit and you have that before you, but to get into questions -- if we haven't got the finances to form the water works corporation, we can't build it. If we haven't got the finances to create the sewage works corporation, we can't build it so we grind to a halt, but until we get past you on the question of whether these things are appropriate, whether we've got this, whether we've got that, whether we've got the other things, we can't

move. It's as simple as that. To get involved in these other things is a waste of time.

Now, I respect Mr. Florence. I consider him a friend, but I can't see the purpose of it. I've sat by very patiently because as a member of the Bar, I let him take care of himself, but now we are getting way off in Robin Hood's barn.

MR. FLORENCE: I didn't mean to drift as far as you --

MR. DICKERSON: Do you have any answer to his objection?

MR. FLORENCE: Well, certainly. First of all, I would just generally point out, Mr. Blasi, that the people of the Town of Somers and especially my client really aren't interested specifically in the internal workings of your clients but we are interested in the net result of your application which is to dump water from a pipe from your sewage plant --

MR. BLASI: Let's talk about engineering.

MR. FLORENCE: Please don't interrupt.
-- to dump sewage onto my client's property. Now,

I'm asking questions generally as it relates to that.

MR. BLASI: We are not dumping sewage.

Now, you see, you used the word "sewage" and I have
to object to that. Let's get co with the engineers.

If it's an effluent after it's been treated in accordance with the most modern tertiary system plus
the removal of phosphates, let them tell them this,
but you are making statements that it's sewage. I
renew my objection, Mr. Commissioner.

#### BY MR. FLORENCE:

Q. Mr. McGann, can I get back to my line of questioning?

Isn't it true that with the appropriate applications,
you could modify the district lines of your proposed
sewer works, and upon that consent, enlarge the use
and consumption by enlarging the number of units in
the geographical area by simple application as you
have once already done? Isn't that true?

MR. BLASI: I object to the question.

It's irrelevant, incompetent, immaterial and not
within the scope of this hearing.

MR. FLORENCE: I submit that you're mistaken, Mr. Blasi.

MR. BLASI: I will leave it to the Examiner.

MR. FLORENCE: Not only the present consumption but the anticipated future consumption are very much a part of this hearing.

MR. DICKERSON: And I would suggest that you keep the questions under assumption until we get to engineers.

MR. FLORENCE: I'm really talking about the formation of a sewage works that could be modified at any time the same way the original application was modified by Mr. McGann and his partner.

THE WITNESS: Mr. Dickerson, can I answer this? I cannot address myself to technical engineering questions --

#### BY MR. FLORENCE:

Q. I am not asking --

A. -- just as I can not and will not in the State of New York address myself as a legal technician.

I am a member of the Bar of the State of Connecticut. I do not practice here. Whenever we have had a matter requiring legal attention, we have retained New York counsel to handle it for us, and I am not

familiar, as Peter Blasi is familiar, with all of the necessary applications and procedures. I rely on counsel in New York just as a layman relies on counsel and any other way.

Q. Now, did you discuss with your counsel then the possibility of altering the boundaries of the present proposed sewage works as you've been granted permission to form in the Town of Somers to include other parcels?

MR. BLASI: I object to it. It's irrelevant.

Vant. What he discussed with me is irrelevant.

A. Did I discuss? I don't understand the question.

Q. Well --

MR. BLASI: I object to the question and I ask Mr. Dickerson to rule on it.

MR. DICKERSON: The objection is sustained. Now, let's get on with it.

#### BY MR. FLORENCE:

- Q. This corporation intends to work at a profit does it not, the sewage works?
  - A. We'll be lucky to break even. I suppose ultimately the intention of all private undertakings is to make a profit. It's not always the case.
- Q. You're not a charitable or a not-for-profit organization, are you?

MR. BLASI: We will concede that.

We are not a charitable organization. Let the record show that.

### BY MR. FLORENCE:

Q. And in point of fact, nor are you a not-for-profit organization when you deal with selling of water to these proposed residents?

MR. BLASI: I object to the question because I have stated that all of the jurisdiction of the operation of the corporation is pursuant to the Transportation Corporations Law of the State of New York.

MR. FLORENCE: I object to interruption by counsel, Your Honor, unless his client can't answer the question and he can say so.

MR. BLASI: He can answer any question.

MR. DICKERSON: Go ahead and answer it.

York as in the State of Connecticut, any utility system servicing a population of this size with water or sewage treatment is regulated tightly by various governmental bodies. This is true in Connecticut. I assume it to be true in New York, and I assume that if there is a profit permitted ultimately and it's a long way in the future, it's a very, very modest profit.

#### BY MR. FLORENCE:

- Q. I see. And nonetheless, you intend for this to be operated on a profit-making basis. Is that correct? You're going to sell water and receive revenues.
- Q. Now, that water that you are going to sell is going to have -- some of it is going to be processed, is it not, as sewage?

#### A. I don't know --

A. This is correct.

MR. BLASI: I object to his answering that question. He is not an expert. He is a lawyer. We'll wait for the engineers to answer those questions,

if you will, Mr. Examiner, and I press my objection.

MR. FLORENCE: I'd just like Mr.

McGann to say that he doesn't know where this water is going, that's all.

THE WITNESS: No, that's not the case.

The best evidence of this is our engineers and consulting engineers, not me.

MR.FLORENCE: That sounds like a legal opinion.

### BY MR. .FLORENCE:

Q. Now, is it my understanding and is my understanding correct that this application is not a fair and accurate representation of what is going to happen to the Brown Brook from the place where your utility service area is located to the point where the Brown Brook goes to the south side of Route 202?

MR. BLASI: I object to the question.

That's a question for an engineer, not for Mr.

McGann. The engineers will be --

MR. FLORENCE: Mr. McGann may perfectly well answer the question whether he understands that or not.

MR. DICKERSON: Are you referring to

that document on the wall?

MR. FLORENCE: Yes, I am.

MR.DICKERSON: Are you moving for its

identification?

MR. FLORENCE: Yes, the Comprehensive Master Plan of Heritage Hills.

MR. BLASI: That has not been put in.

MR. DICKERSON: That has not been submitted for identification or for receipt into evidence.

MR. BLASI: Mr. Dickerson, I understand that these hearings are informal. I understand it's an administrative body and that you have liberal rules of evidence and liberal rules of taking testimony, but this man testified to certain things on direct, and the normal cross-examination would be as to those things he testified to. He's now bringing him into Mr. McPhee's and Mr. Vopelak's expertise and all these other gentlemen's expertise, and if he questions as to what's going to happen, why he shot President Allende or he shot himself -- I mean, we are not here to predict the future. We have some laws, and we intend to comply with them. Now, we

can be here for two weeks on this hearing.

MR. FLORENCE: And we may.

MR. BLASI: And I object to it.

MR. DICKERSON: Mr. Florence, do you have any answer to that objection? Do you wish to defer these technical questions to the engineer?

MR. FLORENCE: I do not intend to ask any technical questions. As I understand, Mr. McGann is a principal in this application. As I further understand, there are several million dollars involved in this. I would expect that Mr. McGann would have some idea of what's going on here.

MR. DICKERSON: O.K. The point I'm trying to bring out or get to is that we have an application before the Department.

MR. FLORENCE: Yes, sir.

MR. DICKERSON: This application may or may not be completely identical with whatever went on in the town level, and we have no real interest in what went on in the town level. We have a proposal before us which we will consider and evaluate, and we will either approve it, reject it or impose conditions on it, and it's only the testi-

mony that Mr. McGann has presented thus far and these documents, some of which have been received into evidence for what they're worth, some of which have been received into evidence and some of which have been marked for identification, that we are dealing with.

#### BY MR. FLORENCE:

Q. Mr. McGann, is it true that whatever the water works company is going to be is not in present existence?

MR. BLASI: That is not true -- excuse

me.

MR.FLORENCE: Mr. Blasi, you can take the oath later on.

MR. DICKERSON: He excused himself.

MR. BLASI: I have to object because I just offered in evidence a certified copy of the certificate. Now, are you talking about the water works or the sewer company?

MR. FLORENCE: Please let Mr. McGann answer, if you would be kind enough to. He is having enough trouble hearing your answers before he answers as it is.

MR. BLASI: Go ahead and answer. I

will interpose an objection. Let the Examiner rule on it.

THE DICKERSON: The grounds for your objection? What is your objection specifically, to the question?

MR. BLASI: Yes. Is it true or isn't it true that there's documentary evidence submitted?

Now, does he want to pick up the document and ask him if it was properly filed or not?

MR. FLORENCE: No, I don't want to be constrained by your cross-examination. Let me give my own.

MR. BLASI: He never testified to that. I put an exhibit in evidence.

## BY MR. FLORENCE:

- Q. Do you know?
  - A. I only know from Mr. Blasi's representation.
- Q. Do you know who's going to run this water works?A. Yes, I do.
- Q. Who is that going to be?
  - A. Heritage Development Group, Inc.
- Q. And do they have any money to provide protection at this moment, the time that you are asking for a

hearing, for the citizens of Somers who might be damaged by anything that would be affected by their conduct in this community?

A. Heritage Development Group would manage and operate, as it will develop, this project. It is a corporate entity. It is the guts of our organization. It is our organization. It represents a management and development team of long standing, and I think that its resources and its knowhow, cogether with insurance protection, together with the protection of the project itself, the assets or the project itself, would be adequate protection for anybody that might be injured by our presence.

Q. Now, let me ask you about "adequate." What in your judgment is adequate protection to the citizens of Somers with respect to what you intend to do in connection with your application for water and for your application to divert and change the bed of a stream?

MR. BLASI: May I object to that question? It's a proper question for the engineers but not to Mr. McGann.

MR. FLORENCE: We're talking about

money.

MR. BLASI: Yes, you're talking about money, and I think it's an engineering question.

MR. FLORENCE: I never knew a lawyer who didn't know something about money.

MR.BLASI: I know plenty about money but at the right place and the right time and the right circumstances. You're talking about damages, and he does not know what damages you're talking about and the engineers would have to define what it is -- what's happening and what the possibility of damage is.

MR. FLORENCE: He didn't say that he does not know what I'm talking about. Mr. Blasi is horseshedding his witness.

MR. BLASI: It's not part of the direct. It's improper cross-examination. Whatever Mr. McGann would say, he is not qualified to answer that question. Even if Mr. McGann says he is, he's not. It's as simple as that.

MR. FLORENCE: And if he answers the question, you're firing him.

MR. BLASI: I'm not going to let him answer because he is not qualified.

sustained.

MR. DICKERSON: The objection is

MR. FLORENCE: I am going to persist,

Your Honor -- Mr. Hearing Officer, Mr. Dickerson.

BY MR. FLORENCE:

- Q. You tell us that you are going to have in the future

  -- you're going to do a future act with respect to

  the protection of the citizens of Somers and

  particularly my client in connection with your

  diversion of the bed of the stream. Are you familiar

  with diverting the bed of the stream?
  - A. In particular as an engineer, I am not. I have--Generally as a lawyer or as an owner of the project.
- Q. Generally as a lawyer or as an owner of the project.

  A. I have a general familiarity that it's required that the streambed be rechanneled so that it avoids the sewerage treatment plant building, and I think you could see that in the Master Plan.
- Q. All right. Now, as I understand further, are you familiar with the fact that you intend or part of your application is to build a 20-foot dam? Are you familiar with that?
  - A. I believe that's correct. That's what I've been told.

- Q. All right. Are you familiar with any of the facts surrounding the necessity for that or the desirability of that?
  - A. Some of them, I'm sure.
- Q. In that respect, are you going to in any way affect the flow of the water that's in Brown Brook presently?

MR. BLASI: I object to the question. Hets not qualified to answer that --

MR. FLORENCE: May I ask him to please give his answer first before we have an objection?

MR.DICKERSON: No.

MR.BLASI: No, I don't want him to answer it.

MR. DICKERSON: The objection is sustained.

MR. BLASI: He is going to give an answer he doesn't know. We have experts here, and you can cross-examine them until the cows come home.

MR. FLORENCE: I would object to Mr. Blasi interjecting what is in the mind of his own witness. He has put his own witness on the stand. I submit that I am permitted to ask questions. If

he cannot answer them, let him so state. I submit that it's improper in a hearing at any level under any circumstances for the attorney of any witness to determine what his witness can answer and cannot answer, what he is able to answer or not answer.

MR. BLASI: You are right as to the last part. I got carried away, but I'm going to make my objection, and I ask that there be a direction as to whether or not it is proper for this witness to answer that question.

THE WITNESS: Mr. Dickerson, if I may,
I would like to interject just one thing, that
almost all of this line of questioning, we have provided in-depth expertise to answer. These engineers
are specialized even as engineers and can give Mr.
Florence exacting answers to his questions. I cannot.
I'm sorry. I just don't have the background or --

## BY MR. FLORENCE:

Q. Do you have any idea of the financial protection which you intend, or any of the corporations of which you are a joint owner or a co-owner or in some way an owner or an operator, for the use as protection for the citizens of the Town of Somers,

namely and specifically those who would be downstream owners to the Brown Brook?

MR. DICKERSON: Protection from what?

## BY MR. FLORENCE:

- Q. From damage that would occur as the result of either, for example, the failure of your dam, the deposition of waters not now being deposited into the Brown Brook which may or may not cause flooding. What arrangements have you made as the owner for the protection of the citizens of Somers and specifically the downstream owners?
  - A. What do you mean by "arrangements"?

- Q. Have you even contemplated the possibility that somehow economic damage may occur?
  - A. Just as when I drive a car I contemplate that somehow economic damage may occur and I protect myself
    generally through the vehicle of insurance. You -additionally, other resources are available.
- Q. Would it be fair to say then that your concept at this point in time as to the protection of those downstream owners would be limited to whatever insurance happens to exist at the time of the damage?

  A. I did not say that. Part of the resource they would have would be through that vehicle. Other than that, there are substantial assets being developed at that site far in excess of values that land was originally acquired at. All of the monies expended become assets which --to which anybody injured or damaged by acts which can not be compensated for would have recourse.
- Q. Would we have your guarantee here that the same corporation that would be responsible for the operation of, say, the water works or the sewage treatment plant would also be the same owner of this other asset to which you refer?

- A. To the -- no, there are varying -- these are two corporate bodies. Let me simply state that as responsible developers, having undertaken a project of this scope and size before, that the very nature of the project, the track record, we don't turn away from damages or injuries caused, our own resources, any resources required to repair or correct the situation are put forth. If we fail for whatever reason, and we have never in the past over a long period of time failed then you could have recourse against insurance, I suppose.
- Q. Let me ask you: Are you familiar with the legal notice that was prepared for this hearing, the contents of it, either generally or specifically?

  A. I guess I am generally. I read it.
- Q. I refer to one particular portion of it that talks in language like this: "Particular consideration given to the present and future necessities of water, namely, of the residents of the Town of Somers and provisions for the determination and payment of any and all legal damages to persons and property, both direct and indirect, which will result from the execution of these plans" which you are proffering

here through your counsel and through other expert testimony. Would you tell me what provisions that you have made that are fair and equitable for the payment of any and all legal damages to persons and property? What did you say, Mr. Blasi?

MR. BLASI: I didn't say anything. I was clearing my throat out.

MR. FLORENCE: Clearing your throat.

MR. BLASI: I was cleaning my throat out. Do you mind?

MR. FLORENCE: No, that's quite all right, but please don't clean it out with instructions to your witness.

MR. BLASI: No, don't worry about that.

A. We would have and represent that we have insurance to protect anybody injured or damaged by our acts, negligent acts, and have so provided and when these corporations come into existence, they will be named insureds under these policies.

Q. Now, for example, you have submitted in evidence
Exhibit Number 19, which is a certificate of insurance presently in existence; isn't that correct?

- A. Right.
- Q. Are you familiar with that policy, the Hartford policy Group?
  - A. Yes, familiar with that certificate.
- Q. Yes, and for which you provide up to \$100,000 of property damage?

A. We do.

MR. BLASI: For each occurrence, read it over.

MR. FLORENCE: For each occurrence.

MR. BLASI: Yes.

- Q. Is it your opinion as the owner that that is sufficient and adequate coverage for property damage for anybody who may have damage for the changes that you are presently contemplating and for which you seek approval from the State of New York and its subdivisions here?
  - A. Yes, and I'm sure, I'm assured by the engineers that it's more than adequate.
- Q. I see. Are you familiar with the fact that there are downstream owners who own, say, approximately 500-some acres of land through whom this Brown Brook -- through which land the Brown Brook pro-

ceeds toward the Muscoot?

A. Yes.

- Q. And about what distance would you say or are you familiar with just generally the traverse of the Browm Brook on the Sun Enterprises Property?

  A. I am not familiar.
- Q. Do you intend or do you know whether or not you're going to bring into the -- either your sewage disposal system or your waste or your system for the catching of drainage, whether you're going to add areas not in the natural valley of a portion of your DRD or do you know whether or not you're going to do that?
  - A. I -- I don't know whether we're going to do it and I don't understand the question, so --
- Q. All right. My question was, are you going to pump to areas other than the natural basin which forms a portion of your DRD application in which the Brown Brook runs?
  - A. I think you'd have to -- you better address that to Mr. McPhee. That's not within my specific knowledge.
- Q. Do I understand by that answer that you don't know?

A. 1 don't know.

- Q. Do you know anything with respect to whether or not you have the approval of the City of New York and their designated agents for the type of sewage disposal plant for which you here seek approval?

  A. I have -- it's my understanding, I can't even state the source, that the City of New York feels that the extended aeration type of system -- and I don't know what I'm talking about in that respect either --
- Q. It's just a series of words?
  - A. -- is the most conservative, proven method of sewerage treatment and since their water supply is at stake, that's the type of treatment they wish us to undertake. That's my understanding.
- Q. Now, with respect to -A. And we're going to do it.
- Q. Then is that different than that originally contemplated, to your knowledge, in your application, to the Zoning Board of Appeals of the Town of Somers when you appeared here before them?

MR. BLASI: Mr. Examiner, he answered that question before and it's irrelevant as to your

body to whom you are making this inquiry. I object to the question.

MR. FLORENCE: I'm essentially leading up to a series in which, essentially, the last question of which is:

- Q. Isn't this hearing which you're having today premature?
  - A. I hope not. I hope --
- Q. Do you have --
  - A. -- it's timely and I somehow have the feeling
    that because of the many delays we've had in trying
    to move forward with the prosecution of this program
    that it's not only not premature but --
- Q. I'd just like an answer.
  - A. It's not only not premature --
- Q. Do you have approvals to put in the type of system you asked for from the appropriate subdivisions of the State of New York as of this time?
  - A. I believe that many of them we have. I am not familiar with the specifications or details of the agencies required to give approval.
- Q. Do you have all of them?
  - A. Pardon?

- Q. Do you have all of them?

  A. I don't know. Mr. McPhee can answer that question.
- Q. Isn't it true as far as you know, you don't have all of them?

A. We certainly don't have the DEC approval.

- Q. I'm referring to other approvals. You're talking about the type of plant, are you not, among other things?
  - A. I'm not talking about it. You're questioning about it.
- Q. Yes, but your application has a good deal to do with the establishment of a sewer plant, doesn't it?

  A. Yes.
- Q. As a matter of fact, that sewer plant is going to service ultimately more than the number of one-family units that already exist in this town, isn't that also true?

MR.BLASI: I object to the question.

A. I don't know.

- Q. You didn't discover that yet?

  A. I don't know.
- Q. You're going to put in 3100 units, is that right,

give or take a few?

A. Hopefully.

Q. And you're going to put the sewage effluent, I understand the concept that you propose, in a brook classified "C", is that also correct or do you know?

MR. BLASI: I object to the question.

A. I don't know what the classification of the brook is.

MR. DICKERSON: O. K. Let me interrupt here for a moment. Mr. Florence, do you have any estimate of the length of time the rest of your cross-examination will take? A lot of this --

MR. FLORENCE: Depends how much Mr. Blasi testifies and how much Mr. McGann testifies.

MR. BLASI: Now, I think that remark is uncalled for. I have a right to object to your questions.

MR. DICKERSON: I concur with Mr. Blasi on this point.

MR. FLORENCE: I would say --

MR. DICKERSON: The reason I ask that is that very simply we're very shortly going to approach the time when the question of adjournment

should arise and my question is whether we should do it shortly or whether your cross-examination will take an hour or half an hour or what.

MR. FLORENCE: I have a series of questions --

MR. DICKERSON: Many of these are going to have to be asked of the technical witnesses.

MR. FLORENCE: I have a series of questions that I haven't gotten to yet dealing with the application and the changes and I also have some questions in relation to the water works that have -- certainly deal with the financial structuring and protection of our clients. I don't know --

MR. DICKERSON: This might be a good time unless -- do you have anything you want to wrap up on this particular chain and start again in the morning?

MR. VAZZANA: May I take two? I'll ask a question and then I'll be through.

MR. FLORENCE: I'll defer.

MR. DICKERSON: The thing is I want to set on a time for adjournment for tomorrow and if

Mr. Florence is going to wrap up shortly, I'll defer that until then. If he's going to continue on we might as well just adjourn now and start early in the morning and go a full day.

MR. VAZZANA: Mine won't take long.

Mine won't take long. It's purely a continuation of what we asked --

MR. WALTERS: Let's get to the adjournment first.

MR. DICKERSON: I understand also that there are some problems, possible problems on the adjournment. I would like to continue tomorrow morning and press on if at all possible. Are there any outstanding conflicts?

MR. VAZZANA: I'll reserve mine for tomorrow.

MR. FLORENCE: I have a conflict but I don't know low -- I might be able to deler and then come back.

MR. WALTERS: In view of the time element getting from New York City up to here, could we start at, say, 11 o'clock?

MR. DICKERSON: Ladies and gentlemen,

we are now going off the record.

(Discussion off the record.)

MR. DICKERSON: Ladies and gentlemen,
I'm going to impose a compromise and please give me
ten minutes to get out of town. I think the adjournment we ought to start at ten o'clock tomorrow
morning and be prepared to go with a lunch break to
approximately 4:30, five o'clock if we have to and
see where things end up there. Mr. Florence said
he would continue his questioning tomorrow. Mr.
Vazzana, do you want to handle your questioning tomorrow?

MR. VAZZANA: Yes, I would prefer to go immediately after Mr. Florence so that there would be some continuity in what my questions will be.

MR. DICKERSON: If there's any problems

I will face that in the morning. I have no particular preference as to the order of cross-examination.

If anybody has any out of sequence problems or anything, I would like to handle them if I can. Dr.

Port?

DR. PORT: Mr. Dickerson, I have to

report at 9:30 to White Plains to the jury room and I request permission to be taken out of order at that point at which I am able to return.

MR. DICKERSON: There will be no problem. I will reserve -- if necessary we will move on to another witness and I will reserve your right to recall this witness.

DR. PORT: Thank you.

MR. DICKERSON: To question.

If there's any problem, Dr. Port, we should have a copy of the record available for your perusal.

DR. PORT: Thank you. That would be helpful.

MR. DICKERSON: It will be one day always but we will have it to cover up. We made a
start, ladies and gentlemen. I think seriously that
we are going to go a lot further tomorrow if we
adjourn at this time and reconvene in these quarters at ten o'clock.

(Whereupon at 4:34 P. M. the hearing was adjourned to reconvene on Tuesday, September 18, 1973 at 10 a. m.)

Witnesses:	Direct	Cross	Redirect	Recross
Curtis McGann	62	84		

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